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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 425

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

vs.

HIGHLAND PARK MANUFACTURING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 1, 1950.
CERTIORARI GRANTED FEBRUARY 26, 1951.

SUPREME COURT OF THE UNITED STATES

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1 In the United States Court of Appeals for the Fourth Circuit

No. 6082

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HIGHLAND PARK MANUFACTURING COMPANY, RESPONDENT

Appendix to Petitioner's Brief—Filed April 27, 1950

Before the National Labor Relations Board

In the Matter of HIGHLAND PARK MANUFACTURING COMPANY and TEXTILE WORKERS UNION OF AMERICA, CIO

Case No. 10-C-2066

DECISION AND ORDER

On March 31, 1949, Trial Examiner Herman Marx issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent filed exceptions to the Intermediate Report. The Respondent also requested oral argument. This request is hereby denied because the record and exceptions, in our opinion, adequately present the issues and the positions of the parties.

The Board [1] has reviewed the Trial Examiner's rulings made at the hearing and finds that no prejudicial error was committed.[2]

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[1] Pursuant to the provisions of Section 3 (b) of the Act, as amended, the Board has delegated its powers in connection with this proceeding to a three-man panel consisting of the undersigned Board members.

[2] At the hearing, the General Counsel presented testimony through employees Hope, Robinson, Pruitt, Dawkins, and Burris to the effect that certain supervisors remarked that the Respondent would not sign a union contract or that it would take a long time doing so. These remarks were alleged to have been made to the employees while the supervisors were attempting to persuade them to return to work in the course of a strike at the Respondent's plant. The supervisors denied that they had made any statements relative to the Respondent's position on union contract matters. The Trial Ex-

The rulings are hereby affirmed.[3] The Board has considered the Intermediate Report, the exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner except as they are inconsistent herewith.

1. The Trial Examiner found, and we agree, that the Respondent violated Section 8 (a) (5) and (1) of the Act by refusing on June 28, 1946, and on various occasions thereafter, to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit.[4] The Respondent excepts to this finding on the ground that the Regional Director's determination, under the consent election agreement, that the Union is the exclusive representative of the Respondent's employees in the appropriate unit "was a purely arbitrary declaration." Specifically, the

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aminer did not resolve the conflicting testimony but, in his Intermediate Report, struck the testimony of the General Counsel's witnesses relating to the remarks of the supervisors as to the Respondent's contract policy, on the ground that the statements "appear to be no more than opinions by the respective supervisors." In view of our finding herein, without reference to the alleged statements of the supervisors, that the Respondent violated Section 8 (a) (5) of the Act, we find it unnecessary to pass upon the question presented by the Trial Examiner's ruling, i.e., whether the supervisor's statements, if made, were, in their context, attributable to the Respondent.

[3] On motion of the Respondent, the Trial Examiner dismissed paragraph IX of the complaint, alleging independent violations of Section 8 (a) (1) of the Act on the ground that no charge with respect to the aforesaid allegations of the complaint had been filed and served upon the Respondent in accordance with Section 10 (b) of the amended Act. No exceptions having been filed thereto, we hereby affirm the Trial Examiner's ruling.

We reject the Respondent's exception to the Trial Examiner's ruling denying its motion to dismiss the complaint made on the ground that the Congress of Industrial Organizations, with which the Union is affiliated, has not complied with the filing requirements of Section 9 (f), (g), and (h) of the amended Act. See *Matter of Northern Virginia Broadcasters, Inc.*, 75 N. L. R. B. 11.

[4] In substantial agreement with the Trial Examiner, we find that all production and maintenance employees at the Rock Hill, South Carolina, plant of the Respondent, excluding clerical employees, superintendents, overseers, second hands, and all supervisors as defined in the amended Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, as amended.

Respondent contends that the Board's field examiner, in the course of conducting an investigation of the challenged ballots, misled the Respondent into believing that it would later be given an opportunity to present evidence to the Board or to a Trial Examiner
3 of the Board as to the employment status of the seven employees whose voting eligibility was challenged by the Union. Contrary to the contention of the Respondent, we find, for the reasons stated in the Intermediate Report, that the Respondent was actually afforded an adequate opportunity to present its position and evidence as to the employment status of the seven employees involved herein, that it did, in fact, avail itself of this opportunity with full knowledge of the purpose of the investigation, and that it was not misled as to its rights in a consent election proceeding of this character.

As we recently had occasion to note in connection with post-election proceedings under the terms of an identical consent election agreement:

> the objective of providing for the procedure of a consent election of the type which does not require a Board certification is to enable the parties, if they so choose, with the approval of the Regional Director, to ascertain the uninhibited desires for representation of the employees in an appropriate unit without recourse to the *Board* at any stage of the proceeding. . . . In keeping with this view, we have held that we will disturb the Regional Directors determination only when pertinent to the issues presented in an unfair labor practice proceeding, and then on the sole ground that the Regional Director's rulings were arbitrary or capricious.[5]

Upon consideration of the entire record, we find, therefore, like the Trial Examiner, that the Regional Director, in upholding the Union's challenges to the voting eligibility of the seven employees in question on the basis of the evidence produced in the course of the field examiner's investigation, and in determining that the Union is the exclusive representative of the Respondent's employees in the appropriate unit, was not acting in an arbitrary or capricious manner.

2. The Respondent further excepts to the Trial Examiner's finding that it unlawfully refused to bargain with the Union on the grounds that (a) the Board is chargeable with *laches* in that, although the charge in the instant proceeding was filed on September 13, 1946, the complaint was not issued by the General Counsel until January 10, 1949; and (b) even assuming that the Union was

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[5] *Matter of McMullen Leavens Company*, 83 N.L.R.B., No. 138, and cases cited therein.

at one time the majority representative, approximately 2 years have already elapsed since such showing of majority status. We do not agree. It is well established that the doctrine of
4 *laches* will not lie against the Board.[6] Moreover, as between an offending party and the victims of his unfair labor practices, the consequences of administrative delay should be borne by the former.[7] As to the Respondent's contention that it should not now be required to bargain with the Union, assuming, *arguendo*, that a loss of majority has occurred since the Regional Director's determination that the Union is the lawful bargaining agent, we attribute such loss to the Respondent's unlawful refusal to bargain with the Union. To refuse to require the Respondent to bargain collectively because the Union lost its majority, "would not only leave the Respondent's unlawful conduct unremedied, but would also obviously discourage collective bargaining . . . . in the hope and expectation that a union's majority will be dissipated by delay and litigation."[8] For the foregoing reasons, we find no merit in the Respondent's exemptions.

3. Like the Trial Examiner, we find that, apart from its designation in the consent election as bargaining representative, the Union demonstrated its majority position thereafter by cards and by a petition, but the Respondent still refused to bargain. We attach no significance on this score to the Respondent's contention that it had no means of knowing but had reason to doubt whether the signatures on the union cards and petition were authentic and representative of the uncoerced choice of a majority of its employees. Rather do we find, in the union cards[9] and petition, as did
5 the Trial Examiner, additional evidence of the Union's continued representative status as the bargaining agent of the Respondent's employees involved herein. Moreover it is clear, and we find, in agreement with the Trial Examiner, that the Respondent

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[6] *N. L. R. B.* v. *Wilson Line, Inc.*, 122 F. 2d 809 (C. A. 3); *Matter of Quarles Manufacturing Company*, 83 N. L. R. B., No. 109.

[7] *N. L. R. B.* v. *Electric Vacuum Cleaner Co.*, 315 U. S. 685, 697-698; *Matter of Agar Packing & Provision Corporation*, 81 N. L. R. B., No. 199.

[8] *Matter of Lancaster Foundry Corporation*, 82 N. L. R. B., No. 145, and cases cited therein.

[9] The Respondent excepts to the failure of the Trial Examiner to find that James E. Kelly "did not sign a Union card in the presence of a witness in whose presence the card purports to show he did sign." While the record shows that Kelly denied having signed the card in the presence of the witness Morgan, Kelly testified further that he did in fact sign the Union card, although in the presence of another witness. In the absence of any evidence in the

was seeking to avoid bargaining by questioning the authenticity of the cards and petition.

Accordingly, because it is admitted that the Respondent refused to bargain with the Union and because the defenses and reasons offered by the Respondent for such refusal are, under all the circumstances and upon a consideration of the entire record lacking in merit, we find that the Respondent has violated the Act. More particularly, we find that on June 28, 1946, and at all times thereafter, the Respondent refused to bargain collectively with the Union as the exclusive representative of its employees in the unit hereinabove found to be appropriate, and thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (a) (5) and (1) of the Act.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Highland Park Manufacturing Company, Rock Hill, South Carolina, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of all production and maintenance employees, at the Respondent's Rock Hill, South Carolina, plant, excluding clerical employees, superintendents, overseers, second hands, and all supervisors as defined in the Amended Act;

(b) Interfering in any other manner with the efforts of Textile Workers Union of America, CIO, to bargain collectively on behalf of employees in the aforesaid bargaining unit.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Textile Workers Union of America, CIO, as the exclusive bargaining representative of all production and maintenance employees at the Respondent's

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record that Kelly's signature was obtained through fraud or coercion, we believe the mistake in the identity of the witness to Kelly's signature, if made, to have no effect on the validity of Kelly's union card. In any event, the authorization of the Union as the bargaining agent herein was amply demonstrated without the inclusion of Kelly's card.

Rock Hill, South Carolina, plant, excluding clerical em-
6 ployees, superintendents, overseers, second hands, and all supervisors as defined in the amended Act, with respect to rates of pay, wages, hours of employment, or other terms or conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant in Rock Hill, South Carolina, copies of the notice attached hereto, marked Appendix A.[10] Copies of such notice, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed by the Respondent or its representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth Region in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Signed at Washington, D. C., this 29th day of June, 1949.

PAUL M. HERZOG,
Chairman;
JOHN M. HOUSTON,
Member;
ABE MURDOCK,
Member,
[SEAL] *National Labor Relations Board.*

APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL BARGAIN collectively upon request with TEXTILE WORKERS UNION OF AMERICA, CIO, as the exclusive repre-
7 sentative of all employees in the bargaining unit described herein, with respect to wages, rates of pay, hours of employment, or other terms or conditions of emply-

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[10] In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "A DECISION AND ORDER," the words, "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

ment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees at the Rock Hill, South Carolina, plant, exclusive of clerical employees, superintendents, overseers, second hands, and all supervisors as defined in the amended Act.

WE WILL NOT in any manner interfere with the efforts of TEXTILE WORKERS UNION OF AMERICA, CIO, to bargain collectively with us as the exclusive representative of the employees in the appropriate unit described above.

HIGHLAND PARK MANUFACTURING COMPANY,
(*Employer*)

By .....
(*Representative*) (*Title*)

Dated .....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States of America

Before the National Labor Relations Board, Division of Trial Examiners, Washington, D. C.

In the Matter of HIGHLAND PARK MANUFACTURING COMPANY and TEXTILE WORKERS UNION OF AMERICA, CIO

Case No. 10-C-2066

Messrs. William J. Raines and *James W. Mackle*, for the General Counsel.

Mr. Whiteford S. Blakeney, of Charlotte, N. C., for the Respondent.

8 Before National Labor Relations Board

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

On September 13, 1946, Textile Workers Union of America, CIO,[1] filed a charge with the Regional Director for the Tenth Region of the National Labor Relations Board.[2] On January 10, 1949, the

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[1] Textile Workers Union of America, CIO, will be referred to herein as the Union.

[2] The National Labor Relations Board will be referred to herein as the Board.

General Counsel[3] of the Board issued a complaint alleging, in substance, that the Respondent, Highland Park Manufacturing Company, had engaged, and was engaging, in unfair labor practices affecting commerce within the meaning of Sections 8 (a) (1), 8 (a) (5), 2 (6) and 2 (7) of the National Labor Relations Act (49 Stat. 449-457, as amended by 61 Stat. 136-163), herein referred to as the Act.

In its significant aspects, the complaint[4] alleges that, in accordance with the results of a consent election held on May 1, 1946, the Regional Director certified the Union on May 29, 1946, as the representative of the employees in an appropriate unit at the Respondent's plant in Rock Hill, South Carolina; that on June 25, 1946, "and at all times thereafter," the Union requested the Respondent to bargain collectively with it concerning the wages and other conditions of employment of the said employees; that on June 28, 1946, "and at all times thereafter," the Respondent refused to bargain collectively with the Union in violation of Sections 8 (a) (1) and (5) of the Act; and that "from on or about March 13, 1946, and continuously thereafter," the Respondent committed certain specified acts of interference with, and restraint and coercion of, the rights guaranteed to its said employees by Section 7 of the Act, thus violating Section 8 (a) (1). Copies of the charge and complaint were duly served upon the Respondent.

The Respondent filed an answer on February 1, 1949, in which it admits the jurisdictional averments of the complaint, the holding of the election, the certification of the Union, and the request by it on June 25, 1946, for collective bargaining, but denies the other allegations bearing on the alleged unfair labor practices, and that it has committed such practices.

Pursuant to notice duly served upon the Respondent and the Union, a hearing was held at Rock Hill, South Carolina, on February 15, 16, and 17, 1949, before the undersigned, Herman Marx, duly designated as Trial Examiner by the Chief Trial Examiner.

At the hearing, the Respondent moved to dismiss Paragraph IX of the complaint on the ground that it is not supported by the charge and that the unlawful conduct alleged in the paragraph occurred more than six months prior to the filing and service of any charge with respect thereto, as required by Section 10 (b) of the Act.

Paragraph IX alleges certain specified acts of the Respondent

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[3] References to the General Counsel herein include the attorneys who appeared for him at the hearing.

[4] The complaint also contains the customary allegations of jurisdiction, which is not in issue here.

constituting interference with, and restraint and coercion of, the employees in the exercise of their statutory guarantees, in violation of Section 8(a) (1). The charge, in essence, alleges that the Respondent engaged in unfair labor practices "within the meaning of Section 8, subsections (1) and (5) of said Act, *in that*" the Respondent refused to bargain after the election and certification (emphasis supplied). It will be observed that the violation of Section 8(a) (1) alleged derives solely from a refusal to bargain and contains no reference to any other conduct as a violation of Section 8(a) (1). In response to an inquiry from the Examiner, the General Counsel agreed that Paragraph IX was designed to allege "independent violations of Section 8(a) (1)"[5] and that such violations "are not intended to support the allegation charging the Respondent with refusal to bargain," except that they might be relevant to a consideration of "the color[6] of the alleged violation" of Section 8(a) (5). The Examiner granted the motion[7] to dismiss Paragraph IX upon the

[5] Although Paragraph IX avers that the Respondent committed the acts therein specified "from on or about March 13, 1946, and continuously thereafter," it was assumed *sub silentio* from the context of the argument that the alleged conduct occurred in 1946 or, in any event, that if the charge filed was insufficient to sustain Paragraph IX any new or amended charge covering the acts set forth in the paragraph could not be filed and served within six months after the commission of the specific acts. For that reason, the Trial Examiner for the purposes of the motion, attaches no significance to the phrase "and continuously thereafter."

[6] The Respondent does not deny its refusal to bargain, basing its defense upon the impropriety of the certification and the absence of proof of representation. If the contention is incorrect and the refusal to bargain, therefore, offends Section 8 (a) (5), the background and "color" of the refusal are not particularly germane.

[7] Prior to the hearing the Respondent filed a motion to dismiss the entire complaint upon several grounds, including the one directed to Paragraph IX at the hearing. The motion was duly referred to the undersigned, who entered an order dated February 8, 1949, denying the motion. The Examiner could not tell at that time whether Paragraph IX was designed to allege conduct which might "be relevant to the charge" of refusal to bargain. Moreover, as the motion was directed to the complaint as a whole, the Examiner concluded that the motion should be denied because the complaint contained other allegations such as the refusal to bargain, which stated a cause of action and therefore required a denial of the motion.

theory that no charge, with respect to the allegations of Paragraph IX, had been filed and that it had not been filed and served in conformity with Section 10(b) of the Act.[8] The Respondent also moved to dismiss the complaint upon the ground that the Congress of Industrial Organizations (not the Union), of which the Union is an affiliate, had not complied with the filing requirements of Section 9(f), (g), and (h) of the Act. That motion was denied.

The General Counsel, relying upon Section 203.20 of the Board's Rules and Regulations, moved that the Respondent be required to set forth in its answer, in addition to the several denials, "a short and simple statement of the facts which constitute its defense." The motion was denied. A motion by the General Counsel to conform the pleadings to the proof with respect to such minor matter as names, spelling and dates was granted.

The General Counsel and the Respondent were represented by counsel[9] at the hearing, participated therein, and were afforded a full opportunity to be heard, examine and cross-examine witnesses, adduce evidence bearing on the issues, submit oral argument and file briefs. The General Counsel and Respondent waived oral argument. Neither party has filed a brief.

Upon the entire record and from his observation of the witnesses, the Trial Examiner makes the following:

Findings of Fact

I. The business of the Respondent

Highland Park Manufacturing Company is a North Carolina corporation, with its principal office at Charlotte, North Carolina.

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[8] The phrasing of the charge is somewhat unusual because of its peculiarly restricted nature. The Examiner regards such cases as *Consumers Power Co.* v. *N. L. R. B.*, 113 F. 2d 38 (C.A. 6) and *Matter of Vanette Hosiery Mills*, 23 L.R.R.M. 1198 as inapplicable. The *Consumers Power* case charged the claimed unlawful conduct in "the general language of the statute," and in *Vanette*, the allegation was that the interference, restraint and coercion consisted of a refusal to bargain and "*other acts and conduct*" (emphasis supplied). Cf. *Matter of Electric Auto Lite Co.*, 80 N.L.R.B., No. 243, 23 L.L.R.M. 1268, where the Trial Examiner who heard that case reached a conclusion similar to that of the undersigned, but the Board found it unnecessary to pass on the question.

[9] Counsel for the Union also appeared during a portion of the hearing, but he was excused, at his request, because he had another engagement.

It operates a plant at Rock Hill, South Carolina, where it is engaged in the manufacture and sale of broadcloth, shirtings and knitted yarn. During the year 1946 [10] the Respondent purchased raw materials valued in excess of $100,000, approximately 90 percent of which was purchased outside the State of South Carolina and shipped in interstate commerce to the said plant at Rock Hill. During the same period, the Respondent manufactured and sold textile products at a valuation in excess of $100,000, approximately 90 percent of which was shipped in interstate commerce from the Respondent's Rock Hill plant to points in other States.

II. The Labor Organization Involved

Textile Workers Union of America, CIO, is a labor organization which admits to its membership employees of the Respondent.

III. The Alleged Unfair Labor Practices

A. *Background of undisputed facts*

On April 10, 1946, the Respondent and the Union signed an agreement for an election by the Respondent's employees at the Rock Hill plant in order to determine whether the employees wished to designate the Union as their exclusive bargaining representative. The agreed unit consisted of all production and maintenance employees; but excluded clerical and supervisory personnel. The agreement, among other things, provides: "Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary
12 procedures and policies of the Board; provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility of voters, raised by any party hereto relating in any manner to the election." The agreement also provides that "the eligible voters shall be those employees included within the unit who appear on the payroll" on April 12, 1946. Among other things, Article 7 of the instrument states that "if challenges are determinative of the results of the election, the Regional Director shall investigate the challenges and issue a report thereon."

The election was held on May 1, 1946. A total of 402 ballots were cast. Of these, 197 voted in favor of the Union, and 194 against its designation. Eleven ballots were challenged. Among these were seven female employees who had previously been em-

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[10] The Respondent's answer, which admits the jurisdictional averments of the complaint, also admits that, with respect to such allegations, the year 1946 is "representative of all times material herein."

ployed as "draw-in" hands at the Respondent's Charlotte plant. They were challenged by the Union on the asserted ground that they were "on loan" from the Charlotte plant and were, therefore, "not regular employees of" the Rock Hill mill.

On or about May 2, 1946, the Regional Director, through Arthur Joy, a Field Examiner on his staff, commenced an investigation of the question of the eligibility of the challenged ballots.

On May 8, 1946, the Respondent's attorney wrote, on its behalf, to the Regional Director, requesting "that a formal hearing be held before a Trial Examiner" for the submission of evidence with respect to the seven "draw-in" hands, in the event that the Regional Director should reach the conclusion that the challenge to their eligibility should be sustained.

On May 29, 1946, the Regional Director issued his "Consolidated Report On Challenged Ballots and Objections and Consent Determination of Representatives." The Report reviews the determinations made by the Field Examiner who conducted the election, analyzes factual data revealed by the investigation, and considers contentions advanced both by the Respondent and the Union. It concludes that one challenged voter was eligible (contrary to the Field Examiner's determination); that two ballots were void; and that eight other voters, including the "draw-in" hands, were ineligible. With respect to the "draw-in" employees, after reviewing evidence pertaining to their employment status at the Rock Hill plant, the Report states that "although the length of the present period of employment (at Rock Hill) is problematical, all factors indicate that it is of temporary nature only" and that
13 "because of this and other factors" discussed in the Report, the seven hands were not eligible to vote. The Report also points out that the mere fact that the seven employees were on the April 12 payroll was not decisive, since the agreement also provides for an election "in accordance with the Board's customary practices and procedures," and it has "frequently held" that temporary employees are not eligible to vote (citing *Matter of Sierra-Pacific Power Co.*, 56 N. L. R. B. 458 and *Matter of Rock Island Produce Co.*, 48 N. L. R. B. 930).

As the one ballot found to be eligible for the tally would be insufficient to affect the results of the election, the Regional Director held that he would not direct that the ballot be opened. Similarly, the other challenged ballots have not been opened, in view of the Regional Director's determination that two of them were void and the rest ineligible for the tally.

In the Report, the Regional Director refers to the Respondent's request "that a hearing be held before a Trial Examiner" in the event of a conclusion the employees involved were not eligible. The Report construes the request as one, "in effect," to "set aside"

the provision in the agreement that the determination of the Regional Director "be final and binding." The Report denies the request, asserting that "no valid reason appears to have been presented" to warrant concurrence in it.

The Report concludes that a majority of the valid votes were cast for the Union, and certifies the Union as the exclusive bargaining representative of the employees in the Union.

On or about June 5, 1946, the Respondent filed with the Board a document entitled "Exceptions to Consolidated Report of Regional Director." Among other things, the Exceptions challenge the findings in the Report as "ex parte" and "not a bona fide exercise of discretion." The Exceptions admit that the "Board's Field Examiner did ask certain questions of the Company which representatives of the Company answered," but assert that the Respondent "did not understand that it then had an opportunity . . . . to present the facts and circumstances . . ." and that it did not have such an "opportunity." The Exceptions request the Board to reverse the Regional Director's rulings with respect to the two void ballots and the eligibility of the seven "draw-in" employees, or, in the alternative, that an opportunity be given to the Respondent to present evidence "at a formal hearing" on the questions involved.

14 On June 28, 1946, the Board, through a member of its staff, wrote to the Respondent's counsel, acknowledging receipt of the Exceptions, pointing out the finality of the Regional Director's determination under the agreement and the Rules and Regulations, and denying the request for a reversal of the Regional Director's rulings and "for an opportunity to present your argument at a formal hearing."

On June 25, 1946, the Union mailed to the Respondent a proposed "collective bargaining contract to cover the rates of pay, wages, hours of employment, and working conditions of the employees," and, in the accompanying letter, requested that a date for a bargaining meeting be set. The Respondent answered in a letter dated June 28, 1946, that "in view of the Exceptions" it was the concern's "understanding that the matter is not now at a point where it is necessary for us either to accede or refuse to accede" to the request for collective bargaining.

On July 3, 1946, the Union wrote to the Respondent again, pointing to the Board's action on the Exceptions, and requesting a bargaining conference. The Company responded by letter on July 5, stating that its counsel had written to the Board and that what it was "trying to do" was to secure "a hearing" and an "opportunity to present evidence and facts" bearing upon the matters "ruled on" by the Regional Director.

Thereafter, on various occasions, both orally [11] and by correspondence,[12] the Union requested the Company to bargain, but the Respondent, in effect, refused to do so, assigning as its reason, in substance, the contention that it was "entitled to a hearing."

It is undisputed, and the Examiner so finds, that the Respondent has refused to bargain with the Union.[13] The issue is whether it was legally justified in its refusal.

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[11] See testimony of J. H. Fullerton, a representative of the Union.

[12] Additional letters requesting bargaining negotiations were sent to the Respondent on July 16, August 28 and September 23, 1946. The Company responded to the letters of July 16 and August 28, respectively, with its letters of July 22 and September 3, 1946. There was no response to the letter of September 23.

[13] Testimony was presented by the General Counsel through Witnesses Hope, Robinson, Pruitt, Dawkins and Burris that during the course of a strike at the plant (commencing on September 16, 1946) certain supervisory employees variously made remarks to the general effect that the Company would not sign a union contract or that it would take a long time doing so. The statements made to Hope, Robinson and Pruitt were asserted to have been made while the respective supervisors were attempting to persuade them to return to work. The remark to Burris was allegedly made while a supervisor was seeking to induce Burris' children to return and consisted of a statement that the Company's president had told the supervisor that "he would never sign a contract." The Examiner entertained considerable reservation about the competency of the testimony, but admitted it provisionally until he could determine whether the General Counsel would, before the close of the hearing, lay a sufficient foundation for its admission by proof of the functions and authority of the supervisors. Evidence to that end was presented, but in the judgment of the undersigned was insufficient. The Examiner intimated that he would probably strike the testimony in his Intermediate Report. The supervisors' alleged statements, with respect to the Company's contract policy, as quoted by Hope, Robinson, Pruitt and Dawkins, appear to be no more than opinions by the respective supervisors. Burris' testimony is inadmissible hearsay. Accordingly, the Trial Examiner strikes that portion of the testimony of the named witnesses relating to statements made by supervisors concerning the Respondent's contract policy. The rest of the witnesses' testimony may stand.

15 B. *The conclusive effect to be given to the Regional Director's determination*

At the hearing, the Examiner sustained an objection to proof offered by the Respondent with respect to the voting eligibility of the seven "draw-in" employees. The Respondent was permitted to make a detailed offer of what it proposed to prove.[14] The basis for the exclusion of the offered testimony was that, by the terms of the agreement and the Board's Rules and Regulations,[15]
16 the Regional Director's determination was "final and binding upon any question, *including questions as to the eligibility of any voters*" (emphasis supplied). It was the Trial Examiner's conclusion that the proffered evidence was simply an effort to go behind the finality of the Regional Director's ruling and to litigate a question which both the Union and the Respondent had expressly committed to the Regional Director's determination.

It is well settled that, in the absence of proof that a Regional Director's determination of voting eligibility in a consent election is arbitrary or capricious, his decision on the matter is conclusive and may not be collaterally attacked.[16] The rule and its under-

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[14] In view of the Trial Examiner's ruling that the proffered testimony was an inadmissible effort to go behind the finality of the Regional Director's determination, it was agreed at the hearing that the Respondent would not call each of the witnesses it had available with respect to the eligibility of the seven employees, but that, to conserve time, an objection would be made by the General Counsel to the proffered line of testimony, and a ruling made thereon by the Trial Examiner, and that the Respondent would be permitted to make an offer of proof of what such witnesses would have testified to if permitted to do so. The sole purpose of the offer was to frame the issue for the applicable ruling of the Trial Examiner. As it was unnecessary to the statement of the issue and the ruling involved, the Trial Examiner's exclusion of the evidence does not take into account other possible objections to portions of the offer of proof.

[15] See Article III, Section 12, Rules and Regulations, Series 3, in effect at the time of the election.

[16] *N.L.R.B.* v. *Capitol Greyhound Lines*, 140 F. 2d 754 (C.A. 6), certiorari denied, 322 U. S. 763; *Semi-Steel Casting Co.* v. *N.L.R.B.* 160 F. 2d 388 (C.A. 8); *Matter of Postex Cotton Mills, Inc.*, 80 N.L.R.B., No. 178, 23 L.L.R.M. 1197; *Matter of Miehle Printing Press and Manufacturing Co.*, 58 N.L.R.B. 1134.

lying reason were summarized in *N.L.R.B.* v. *Capitol Greyhound Lines*, 140 F. 2d 754 (C. A. 6) as follows:

> . . . we find that the Regional Director's ruling was neither arbitrary nor capricious. In the absence of such conduct, we feel ourselves bound by the terms of the agreement providing for the finality and binding effect of the Regional Director's determination to the same extent as a court is bound by an agreement to abide by an arbitrator's award. To hold otherwise would permit an employer deliberately to ignore binding commitments embodied in a consent agreement; would open the door to subterfuges for hampering and delaying a final determination of a bargaining representative; and would tend to defeat, rather than effectuate, the policies of the Act.

As in a challenge to an arbitrator's award [17] (or, for that matter, as in any case where a party has the affirmative of an issue), the burden of showing that the Regional Director acted arbitrarily or capriciously is upon the Respondent. Proof of erroneous judgment or misinterpretation of the facts is not enough.[18]

17 The foundation for an escape from the finality of the decision must, in fact, establish arbitrariness or caprice.

The Respondent failed to establish that the Regional Director acted arbitrarily or capriciously. The record shows that he caused an investigation to be made of the facts relating to the challenged ballots and issued a report thereon. This was done in conformity with Article 7 of the agreement. In the course of the investigation, Arthur Joy, the Field Examiner who made it, met at the plant with representatives of the Respondent and the Union on the day following the election. The meeting was arranged by the Field Examiner. The Respondent was represented by the concern's general superintendent (from its Charlotte office), the general manager of the Rock Hill plant, T. W. Church, and its attorney. The Respondent understood that "the purpose of the meeting was for him (Joy) to get some information in regard to (the) challenged ballots" (Church's testimony). Church affirmed under cross-examination that the Field Examiner "asked a great many questions." He also testified that Joy "asked to see the pay rolls, and where (the) girls lived, and questions of a similar nature." Under cross-examination,

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[17] 3 Amer. Juris. 991 (Arbitration and Award).

[18] An arbitration award (cf. the *Capitol Greyhound* case) will not be set aside unless it is clearly made to appear that the arbitrators "misconceived their duties, acted upon some fundamental or apparent mistake, or have been moved by fraud or bias." 3 Amer. Juris. 961 (Arbitration and Award)

Church manifested considerable vagueness as to the information he gave Joy, stating in several instances that he "probably" furnished certain data or that there was a "possibility" that he did, and in others claiming a faulty recollection. From his demeanor and answers, the Trial Examiner has concluded that Church manifested an absence of frankness with respect to his account of the information furnished to Joy. However, it is plain that even on the basis of Church's testimony, the Respondent made a statement of its position on the question involved; that Joy examined the relevant pay-roll records; that he inquired into the history of the employment of the seven girls in both the Charlotte and Rock Hill plants and of their record of transfers between the two mills; and that he secured other relevant information from the Company. Church also agreed that there was a "possibility" that he discussed with Joy the "applicability of group insurance" prevailing at the Rock Hill plant to the girls on the occasion of previous transfers and that he "probably" displayed the Social Security records to Joy and discussed with him the difference in wage rates between both plants and how they were applied to the seven hands. Church asserted that he "think(s)" he discussed with Joy differences, with respect to the manner and time of payment and pay-roll periods, between the seven girls and other employees at the Rock Hill plant.
18 Significantly, leaving aside the inferences drawn from it, much of the information secured by Joy from the Respondent is reflected in the Regional Director's Report and in the offer of proof made by the Respondent's counsel.[19]

Church gave some testimony on direct examination that the firm's representatives "left (the meeting) with the understanding that we would be allowed to present evidence and facts to the Labor Board in regard to (the seven "draw-in" girls) and that when it was decided that the votes would be opened, that they would be opened in Atlanta in front of a representative of the CIO and a representative of the Company." He also affirmed that he requested of Joy "an opportunity to present the facts and evidence." However, it does not clearly appear from his testimony at this point what "opportunity" the witness had in mind, whether on that occasion or some other. The next question put to him by counsel whether he understood he "was then and there being given such opportunity" brought the vague response, "Well, I understood we would be given opportunity."

[19] The Regional Director in his Report discusses in some detail the employment records of the employees involved, the employment practices of the Respondent, and its contentions, and it is a reasonable inference that his discussion and findings are based, at least in part, on the information secured by Joy from the Respondent.

At that point, the undersigned indicated to counsel that Church's "understanding" might "very well be a conclusion." Thereupon, Church was asked to state "what was said in regard to your request to have opportunity to present the facts and evidence in regard to the eligibility of the seven people," and the witness gave the following testimony:

> A. Well, I can't remember the exact words, but I asked that we be given the opportunity to present the complete facts and the complete picture to either the Board or whoever was necessary. I can't remember Mr. Joy's words, but I think he said that we would be given that opportunity.
>
> Q. (By Mr. Blakeney) Now, irrespective of what you think, will you state what was the substance of what he communicated to you, you would or wouldn't have an opportunity.
>
> A. Well, he said we would have, or words to that effect.

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Church then denied that the "Company ever has been given an opportunity to give facts and evidence" with respect to the employment status of the seven girls.

The implication of the denial and the quoted testimony is that the Respondent was misled into not giving the facts in "detail." However, the testimony is manifestly vague and conclusionary. The Trial Examiner observed from both the witness' demeanor and the context of his evidence that he was hesitant and uncertain, even in response to repeated questions of a leading nature. The best construction which can be placed upon Church's testimony is that he "think(s)" Joy said a future opportunity would be furnished to the Respondent to submit "facts and evidence." His denial that "the Company ever has been given (such) an opportunity" is manifestly contrary to the facts, for he admitted that Joy "asked a great many questions"; that "we gave him everything he asked for"; that he understood that "the purpose of the meeting was for (Joy) to get some information in regard to these challenged ballots"; and that the Respondent made a statement of its claim with respect to the eligibility of the seven hands. It is also evident that Company furnished considerable pertinent data to Joy.

Between the meeting on May 2 and the certification on May 29, the Respondent failed to send or submit any facts to the Regional Director (see Church's testimony), and there is no evidence that it has ever taken the initiative to submit any facts bearing on the eligibility of the challenged employees, except to insist on "a formal hearing" before a Trial Examiner which would, in effect, be a review of the Regional Director's determination. Significantly, its attorney attended the meeting with Joy, and the Respondent was armed with whatever implementation it needed (including its books) to make whatever disclosure of information it desired.

On the basis of the evidence, the Trial Examiner finds that the Respondent knew the purpose of the investigation, had an opportunity to explain its position and place any facts in its possession at the disposal of the Regional Director, and did, in fact, in response to Joy's "many questions" give him considerable information bearing on the eligibility of the challenged voters, although Church manifested a faulty recollection and was somewhat vague concerning the data Joy secured. There is no credible evidence that the Respondent was in any way misled and the Trial Examiner finds that it was not misled.

The Respondent's conclusionary implication that it was "misled" also overlooks an important feature of its agreement. Article 7 of the instrument requires the Regional Director to make an investigation of challenged ballots. There is nothing in the agreement which requires him to interview one person rather than another or to secure his information from any specified source. The scope and conduct of the investigation are committed to the discretion of the Regional Director by the plain terms of the Respondent's own agreement.[20] Quite aside from the fact that Joy did interview officials of both the Respondent and the Union and received information from the Company in response to "a great many questions," the Respondent's emphasis on its claim to "present facts and evidence" contains the fallacy that its agreement gives it any right to do so or to place any measure on the nature and scope of the Regional Director's investigation. The agreement and the Board's Rules and Regulations vest in the Regional Director a broad discretion over the scope and conduct of his investigation. An intelligent exercise of such discretion must leave it free to adjust itself to the varying needs of diverse situations. To read into agreements for consent elections any pre-conditions for the scope and conduct of the Regional Director's inquiry would have a debilitating effect on the force of commitments voluntarily made and would hamper the speedy solution of representation questions which such agreements are designed to achieve (cf. *N.L.R.B.* v. *A. J. Tower Co.*, 329 U. S. 324). Certainly, in the absence of a plain showing of administrative abuse, neither party to such an agreement should be permitted to attach *a posteriori* conditions either to its obligation or to the inquiry it has freely placed in the hands of another.

The record is barren of such a showing. Measured against the

[20] Conceivably, there may be many situations where a proper and objective investigation would require that a Regional Director give primary emphasis to information secured from sources other than that of a union or an employer, for the plain reason that they are interested parties.

conclusionary "impression" to which Church testified, is the undisputed evidence of an investigation which included the receipt of factual data from the Respondent's top management personnel, given in the presence of its attorney, as well as a statement of its position with respect to the challenged ballots. Moreover, the Regional Director's Report shows on its face that his investigation covered, and that he gave consideration to, many, if not all,
21 of the purported facts the Respondent contends that it could establish through its proffered evidence. There is no proof that the investigation did not include all the basic and relevant facts (no obligation is imposed upon the Regional Director to spell out all the evidence, minute or otherwise, in his Report) or that other persons, including the seven "draw-in" girls, were not interviewed. At most, the Respondent's offer of proof raises a conjecture that the investigation did not reach some of the purported facts (consisting, in part, of evidentiary minutiae) included in the offer or that the Regional Director erred in his construction of such alleged facts. All this falls far short of the burden which the law places upon the Respondent of establishing that the Regional Director arbitrarily or capriciously refused to give effect to any knowledge he had of the controlling facts in the case [21] or that he otherwise acted arbitrarily or with caprice.

In the light of the foregoing, as well as upon the authority of well settled principle,[22] the Respondent's request for a "formal hearing," whether before a Trial Examiner or any one else, with respect to the eligibility of the challenged ballots, amounts to no more than a requirement that an appellate review be made of the Regional Director's findings. The Respondent's agreement and the Board's Rules and Regulations, to which the undertaking was expressly made subject, preclude such a procedure.

C. *Evidence, in addition to the election, that the Union represented the unit.*

The General Counsel produced evidence that the right of the Union to represent the unit does not rest alone on the certification.

James Fullerton, a representative of the Union, spoke to Church

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[21] *N.L.R.B.* v. *A. J. Tower Co.*, 329 U. S. 324.

[22] *Matter of Aetna Fire Brick Company*, 56 N.L.R.B. 849, 14 L.R.R.M. 159; *Matter of Sidran Sportswear*, 23 L.L.R.M. 1324; *Matter of Ferriss-Lee Lumber and Mfg. Co.*, 71 N.L.R.B. 989, 19 L.L.R.M.1078; cf. *Matter of A. J. Tower Co.*, 60 N.L.R.B. 1410, 16 L.L.R.M. 67 (see, also, *N.L.R.B.* v. *A. J. Tower Co.*, 329 U. S. 324, reversing 152 F. 2d 275 (C.A. 1) in which the Court of Appeals had denied enforcement of the Board's order).

in the summer of 1946, after the Respondent had advised the Union of its position on the certification, "again requesting recognition" and offering "to submit to a card check on our applications—
22 cross-check with the payroll." According to Fullerton, Church refused the offer,[23] and the Union thereupon undertook to "get the workers to sign up again" in order "to convince the Company that "the workers . . . wanted a union." The signatures were secured, principally in the months of July and August. The employees signed a card[24] bearing a different color from the ones previously used, "so there couldn't be any confusion" (Fullerton's testimony). The cards purport to state the membership of the signatory in the Union, the date upon which he signed, and that he designates the Union as his bargaining agent.

The record contains a list of 256[25] employees who signed the cards and the respective dates on which they signed. The bargaining unit during the period covered by the dates appearing in the list consisted of 430 persons, and there is no dispute that the 256 employees were members of the unit.

On or about September 10, 1946, according to Fullerton, he spoke to Church, again suggesting a cross-check and offering to have it made "by an impartial person," such as "some Conciliation person or an arbitrator" or a certified public accountant, but Church declined, stating that the Respondent had "a continuous appeal." Fullerton testified that he asked Church what that meant, but that the latter stated he did not know and that it was the advice of the Company's attorney. Then, according to Fullerton, he spoke to the Respondent's counsel "and made the same proposition" to him and received the same response about "a continuous appeal," and that "no matter what happened, it was in a continued appeal; anything that came up in regard to this case." Fullerton testified that,

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[23] Fullerton's testimony does not specify the date of the conversation, but from the context of the testimony it appears to have occurred in June. There is no evidence to controvert Fullerton's version of the conversation. The Examiner finds that it occurred as related by Fullerton.

[24] See G.C. 19 for a sample card.

[25] The list contains more than 256 names because some of them are duplicated.

[26] The evidence of the conversation with the attorney was not controverted. The Trial Examiner finds that the conversation, as related by Fullerton, occurred, not only because it was not disputed, but in the light of Church's version of his talk with Fullerton which will be adverted to below.

at the attorney's suggestion,[26] he spoke to Church again
23 about the cross-check, but that the plant manager declined to have it made, stating that he was following the attorney's advice. Fullerton asserted that he informed both the attorney and Church, in his conversations with them, that the Union was securing new authorization cards.

Church's testimony confirms that of Fullerton with respect to the offer to have the cards checked by "an impartial person" or, as the plant manager put it, "an arbitrator or auditor."[27] Although Church makes no specific reference to the phrase "a continuous appeal," he does not at any point deny making the statements with respect to the "appeal," but, in fact, lends corroboration to Fullerton's version. Church admits that he told Fullerton that the Respondent would refuse to recognize the Union and bargain with it, "on the basis" of a check of the new cards, because the Respondent "would rely on the election."[28] Church's version of the conversation differs from Fullerton's in only one material respect. Church testified that he also told Fullerton, in refusing to agree to the cross-check, that the Respondent "wouldn't know the authenticity of the cards."[29]

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[27] Church did not testify to any other conversation with Fullerton about the cross-check. Although Church could not fix the date of his talk with Fullerton, it is clear from the context of both versions that it was the one which Fullerton stated was held about September 10, 1946. The Examiner finds that the conversation was held on or about that date.

[28] In the light of the testimony given by both Fullerton and Church, the Examiner finds that the latter made the statements with respect to "a continuous appeal," as attributed to him by Fullerton.

[29] Respondent's counsel asked Church on direct examination what he stated to Fullerton as his "reason for not agreeing to the card check proposition." Church responded, "Well, we wouldn't know the authenticity of the cards. * * * They weren't going to bring the cards and show them to us. They proposed we have an arbitrator or auditor, I believe, to check the cards against the payroll." It is somewhat difficult to determine from his testimony whether Church was quoting Fullerton that "they weren't going to bring the cards and show them to us" or whether Church was only giving his interpretation of the situation. However, it makes no real difference in either event, in view of the findings made below.

The General Counsel presented evidence authenticating the signatures on the cards.[30] To counter this evidence and,
24 apparently as corroboration for Church's claim that the Respondent "wouldn't know the authenticity of the cards," the Respondent produced testimony from four of the signatories.

One employee, Nell McDonald, testified that she signed a card some time in August because a fellow-employee working near her post in the plant frequently called her "names" over a period of several months and said he was going to continue until she signed.[31] Another employee, Arthur Thomas, stated that he signed after the strike began, and not on August 3, 1946, the date of his card.[32] A third employee, Walter Sweatt, testified that the union representative who asked him to sign said that "he was going around getting everybody to sign that didn't want (a) strike"; that the witness responded that he was a watchman and understood that he was not supposed to belong to the Union; that the representative said that that circumstance made no difference; and that he (Sweatt) then signed "the book." Sweatt asserted that he signed because he thought it was "to keep from striking" and that he did not know that it was to join a union.[33]

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[30] It was stipulated that, if called to testify, 11 persons (named in the record) would have testified "that there is no one of 256 persons named on a list to be marked General Counsel's Exhibit No. 18 whose signature to a 'union card' (meaning G. C. 19) was not witnessed by at least one of the (11) individuals named above, the dates of such witnessing being the dates set opposite the names of the persons on General Counsel's Exhibit No. 18." The effect of the stipulation was to establish *prima facie* evidence of the authenticity of the cards.

[31] It is interesting to note that Mrs. McDonald's husband, J. R. McDonald, also signed a card, but there is no suggestion anywhere in the record that he did so for any reason other than of his own free will.

[32] Thomas stated that because he cannot read "enough to get by" he did not attempt to read the card. He testified, also, that he "can't write so well" and that therefore, the man who witnessed the card signed his name for him, but did so with his permission.

[33] The Examiner regards Sweatt's testimony that he did not know he was joining the Union as unreliable. His evidence on that point is inconsistent with his testimony that he told the union representative that he did not wish to sign because he was a watchman and understood that he was not "supposed to belong to (a) union." The witness did not impress the Examiner as reliable and he does not credit his claimed lack of understanding of the reason for his signature.

The fourth witness, John Shaver, asserted that he worked for seven weeks after the strike and that he then joined the Union.

According to Shaver, after the strike began he frequently
25 found his driveway filled with nails; that the road for a distance of a quarter of a mile in each direction from his house "was filled full of nails"; that he got many punctures in his tires; that he then went down to the Union's office, became a member, and said to Charles Morgan, a union representative, "Let's stop the nails," to which Morgan responded, "All right" and that "there wouldn't be any more"; and that after he joined the Union, "the nails quit coming." Under cross-examination, Shaver stated that he did not know who put "those nails out there," although he "always watched the driveway" and that when he was interviewed by a Field Examiner employed by the Board he did not tell him anything about the nails "because I thought he was on the opposite side."[34]

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[34] Shaver was interrogated about the "nails" at some length. Many apparently extravagant and colorful details emerged from his story, some of a manifestly improbable nature. He asserted that both the school bus and mail carrier stopped coming to his house; that on eight or ten different occasions he collected enough nails in his driveway to fill both hands, although he "always watched the driveway"; that the nails on the road were "big-headed roofing nails," some of them painted "the same color as the road" and "you couldn't see them"; and that "these roads was filled full of nails on both sides * * * they were scattered for about a quarter of a mile each way." At two points, Shaver was asked whether the school bus and mail truck "ever got a punctured tire." Both times, Shaver evaded the questions, stating they did not come into his driveway. When the matter was pressed, he said that the school bus "got several punctures" and that the mail truck "got punctured tires." Questioned further about the source of his information, he said that he knew about the bus because he was told about the punctures and "because he quit coming," and that the mailman told him twice about his truck's punctures. Shaver also said he told the "rural police" about the nails and it "got where they would travel through there maybe twice or three times a day. He volunteered that he had "heard they (the police) got nails out there twice." After he testified that he had picked up five punctures one morning on his way to work, he was asked whether he stopped to look for nails on his return, and he made the evasive statement that "they (unidentified) pretty well swept the country that day" and that "they didn't put them out in daylight * * *

It is unnecessary to evaluate the testimony of these wit-
26 nesses (although the Examiner regards Thomas as an honest witness and Sweatt and Shaver as unreliable).[35] The fact remains that there is unimpeached evidence that 252 other employees, a majority of the 430 in the bargaining unit, designated the Union as their bargaining agent. This conclusion is fortified by other evidence of the Union's representative status to be discussed below.

The testimony does suggest the possibility that Church had some warrant for his refusal to bargain on the basis of the cards because the Respondent "wouldn't know the authenticity of the cards." However, the evidence leads to the conclusion that the asserted doubt about the authenticity of the cards was not the reason for the refusal to bargain. First, there is the uncontradicted and credited testimony of Fullerton that Church stated before the new signatures were secured that the Company would refuse to have the Union's membership cross-checked and abide by the results because the Respondent had a "continuous appeal" from the Regional Director's findings. Second, Church admits that he told Fullerton in rejecting his proposal for a check of the new cards and for bargaining on that basis, that the Respondent "would rely on the election." Third, and perhaps most revealing, is Church's testimony that he "believe(s)" that "the Union proposed a new election" after a strike broke out at the plant in September 1946, but that he rejected the proposal, stating "we still

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they put them out at night (although he had never seen anybody "put out" any nails).

Upon obesrvation of Shaver's demeanor, it became apparent to the undersigned that Shaver fancied himself as a combatant on one of "opposite" sides and that in his fancied role he was making extravagant use of his imagination. None of his testimony was corroborated by the bus driver, mailman or police (they were not produced as witnesses). The witness' demeanor on the stand, his evasiveness at several points, and his eagerness to inject a description or an event at various places either to justify (unnecessarily) his conduct or place another's under a cloud, imparted the stamp of unreliability to his testimony.

[35] The Examiner credits the testimony of Mrs. McDonald concerning her reason for joining the Union, although in view of other testimony she gave (to which reference will be made below), he entertains some doubt about her reliability. The record shows that she voluntarily signed a petition in March 1947, as one of 304 employees. The petition was sent to the Respondent's president and recites the fact that the signers are members of the Union and designates it as their bargaining agent.

took our stand that we should get the final result of the old election by counting the votes and we agreed if they did count the votes, we would abide by that." Finally, all overtures for a
27 resolution of the controversy came from the Union, but the Respondent rejected all of them and offered none itself, advancing only its adamant insistence that it had a right to go behind its own agreement. It would seem that any real doubts that the Respondent entertained about the authenticity of the cards could readily have been resolved had it been willing to find a basis for removing them. Its failure to offer any proposals and its refusal to recede from its position on the election bespeak its real motive (to which further reference will be made below) for rejecting the Union's offer to bargain on the basis of a check of the cards.

On September 12, 1946, Fullerton called Church on the telephone and told him that the employees "were demanding action" and asked him "what he was going to do about it." Church said "he wasn't going to do anything."

Fullerton called a meeting of the Union's members on September 15 and reported to them the results of his efforts to open bargaining negotiations. The membership voted to go on strike on the following day "until the Company agreed to recognize the Union and bargain collectively" with it. The strike began on September 16, 1946, and ended on May 3 or 4, 1947.[36] The Examiner finds that the cause of the strike was the Respondent's refusal to bargain with the Union and was, therefore, caused by the Respondent's unfair labor practice. The undersigned also finds that upon the commencement of the strike, the bargaining unit at the plant was the one described in the agreement for the election and that it numbered 430 persons.

Between March 20 and March 24, 1947, the Union circulated a petition among its members and requested them to sign it. The document was addressed to R. H. Johnston, president of the Respondent. Among other things, it recited the membership of the signatories in the Union; that they wanted "the Union to represent us in collective bargaining about wages, hours of work and other conditions of employment"; and that they were urging "that the Company recognize its duty to bargain." The petition was signed by 304 persons who were in the Respondent's employ at the time of the strike.

The signatures were secured, at the instance of the Union, by a notary public, James H. Collins, who was employed in another plant in Rock Hill and was a member of the local of the Union

[36] A majority of the employees remained away from work during the strike.

there and of its auditing committee. Collins testified that
28 he knew most of the people who signed, that those he did now know were identified for him by others who did, that he gave the petition to all of the signatories to read or read it to them upon request (some could not read), and that they all signed in his presence. Collins stated that about half the employees signed at a commissary operated by the Union, and from which strikers secured their food during the strike, and that, except for two or three individuals whom he met on the street, he visited the homes of the other employees and secured their signatures there. The task consumed several days.

The only evidence produced by the Respondent to controvert any portion of Collins' testimony was given by Nell McDonald (who also testified that she signed a card because another employee called her names) and her husband, J. R. McDonald, who were both out on strike at the time they signed the petition. They did not dispute the fact that they signed (Mrs. McDonald signed for her husband at his request because he cannot read or write), but both testified that the document was not signed in Collins' presence. However, Mrs. McDonald stated that she could not remember any of the circumstances surrounding her signing of the petition. "I can't recall a thing about it," is the way she put it. Her husband testified that he was asked at the commissary to sign (he does not state by whom), that he took the petition home because he could neither read nor write, and that his wife signed for them both. According to McDonald, Collins did not go with him. There is no contention that both McDonalds did not sign freely and voluntarily (in fact, McDonald's testimony makes it appear as a cautious and deliberate act). The only matter placed in dispute is whether Collins was present at the time of signing. Significantly, Mrs. McDonald remembers nothing of the incident and her husband[37] does not explain how the petition got back to Collins.

However, in view of the voluntary nature of both signatures and the complete absence of any other evidence impugning either the authenticity of any of the 304 signatures or that they were voluntarily affixed to the petition, it is unnecessary to resolve the question of whether Collins saw the McDonalds sign. It may be assumed that if the Respondent were in possession of any
29 other evidence in derogation of that given by Collins, it would have produced it. Its failure to do so supports the

[37] McDonald suffers visibly from a nervous ailment, manifested by a trembling body, and from a marked speech impairment which rendered his testimony difficult to understand. He was examined only briefly.

conclusion that the signatures are authentic and that the petition is, in fact, what it purports to be.[38] On the basis of the evidence, coupled with the facts that Collins impressed the Examiner as a reliable witness, the undersigned finds that the persons who signed the petition were, on the respective dates on which they signed, members of the Union and that the effect of their signatures was to vest or reaffirm authority in the Union to represent them as their agent for collective bargaining with the Respondent.

The petition was mailed to Johnston on April 12, 1947. Church testified that he spoke to Fullerton about it and that he informed the latter that the Respondent "questioned the signatures and questioned whether they were signed with their own free will and accord." However, the only "inquiry or investigation" that Church testified the Respondent made about the matter was "about Mr. Collins." The Respondent "found out that he was a Union fellow" and that "put more doubt in our mind." For all that the record probatively shows, the sole ground for the refusal "to recognize" the petition was the fact that a "Union fellow" acted as a notary in witnessing the signatures.

The Respondent's approach to the petition fortifies the view that its real motive for refusing to bargain on the basis of a cross-check of the cards was not any doubt it entertained about the authenticity of the cards. In the case of the petition, as in that of the cards, all the Respondent did was to cloak itself with a conclusionary suspicion that it was not representative of the employees' will.

On the basis of the whole record, and particularly the Respondent's rejection of any suggestions made by the Union to reassure it, including even a proposal for a new election, and the Respondent's failure to advance any proposal of its own, except that which would derogate from its agreement, the Examiner finds that the Company did not reject the cards and the petition because of doubts concerning their authenticity, but that it did not wish to bargain with the Union in any event and used its insistence on the claimed invalidity of the Regional Director's determination and its questioning of the authenticity of the cards and the petition as a shield against its obligation to bargain.

D. *Concluding findings*

The Examiner makes the following concluding findings:

1. As a result of the election held on May 1, 1946, the Union became on that date, and was at all times thereafter, the exclusive

[38] The authenticity of the petition and its duplication of signatures on the new membership cards furnish corroborative evidence of the authenticity of the cards.

representative of the employees in the unit set forth in the election agreement for collective bargaining with the Respondent.

2. The employees who signed the cards in July, August and September 1946, and the petition in March 1947, constituted a majority of the unit described in the election agreement, and the signatories thereby designated the Union, aside from the results of the election, as the representative of the said unit for collective bargaining with the Respondent.

3. A majority of the employees in the unit signed the said cards prior to August 31, 1946,[39] and the petition prior to April 12, 1947.

4. The Union requested the Respondent on June 25, 1946; July 3, 1946; July 16, 1946; August 28, 1946; on or about September 10 and 12, 1946; on April 12, 1947; and some time thereafter, to bargain with it concerning the wages and hours and other conditions of employment of the employees in the said unit.

5. In response to each of the said requests to bargain, the Respondent has refused to bargain collectively with the Union, and has not bargained collectively with it.[40]

6. By its refusals to bargain collectively with the Union, the Respondent has violated Section 8(a) (5) of the Act, and has interfered with, restrained and coerced its employees at the Rock Hill plant in the exercise of the rights guaranteed to them by Section 7 of the Act, thus violating Section 8(a) (1) of the said Act.

31 IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in Section III above, occurring in connection with the operations of the Respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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[39] The Respondent was put on notice by the Union that a majority of the employees in the unit had signed the cards. That is the necessary meaning of Fullerton's conversation with Church on or about September 10, 1946. The Union also gave definite notice of the effect of the new cards in its letter to the Respondent dated September 23, 1946.

[40] Considered in the light of the evidence, the Examiner finds that, in addition to its oral rejection of bargaining requests, the Respondent's letters to the Union, dated June 28, July 5 and July 22, 1946, constitute a refusal to meet with the Union for the purpose of collective bargaining.

V. The Remedy

Having found that the Respondent has engaged in unfair labor practices violative of Sections 8(a) (1) and (5) of the Act, the Examiner will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, the Examiner will recommend that the Respondent, upon request, bargain collectively with the Union, as the representative of such employees, with respect to their rates of pay, wages, hours of employment, and other conditions of employment, and, if an agreement is reached, to embody it in a signed agreement.

Having found that the Respondent refused to bargain collectively with the Union as the representative of the said employees and that such refusal interferes with, restrains and coerces the employees in the exercise of the rights guaranteed to them by Section 7 of the Act, the Examiner will recommend that the Respondent be directed, in any like or similar manner, to cease and desist from interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, to the extent provided by law.

Upon the basis of the foregoing findings of fact and of the entire record in this proceeding, the undersigned makes the following:

Conclusions of Law

1. Textile Workers Union of America, CIO, is a labor organization within the meaning of Section 2(5) of the Act.

32 2. All of the Respondent's production and maintenance employees at its Rock Hill, South Carolina, plant, exclusive of clerical employees, superintendents, overseers, second hands, and all other supervisory employees having authority, to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action, or having the authority set forth in Section 2(11) of the Act, constitute a unit appropriate for the purpose of collective bargaining, within the meaning of Section 9(b) of the Act.

3. Textile Workers Union of America, CIO, was on May 1, 1946, and at all times thereafter has been, the exclusive representative of all the employees in the aforesaid appropriate unit for the pur-

poses of collective bargaining, within the meaning of Section 9(a) of the Act.

4. By refusing on June 28, 1946, and on various occasions thereafter, to bargain collectively with the Textile Workers Union of America, CIO, as the exclusive representative of its employees in the appropriate unit, the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8(a) (5) of the Act.

5. By interfering with, restraining, and coercing its said employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8(a) (1).

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDATIONS

On the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, the Examiner recommends that Highland Park Manufacturing Company of Rock Hill, South Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of all of the Respondent's production and maintenance employees at its Rock Hill, South Carolina, plant, exclusive of clerical employees,
33 superintendents, overseers, second hands, and all other supervisory employees having authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action, or having the authority set forth in Section 2(11) of the Act;

(b) Engaging in like or similar acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form labor organizations, or to join or assist Textile Workers Union of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of the

employees in the appropriate unit described above, with respect to their rates of pay, wages, hours of employment, and other conditions of employment, and, if an agreement is reached, to embody it in a signed agreement;

(b) Post at its plant in Rock Hill, South Carolina, copies of the notice attached to this Intermediate Report marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Tenth Region, shall, after being signed by the Respondent's representative, be posted by the Respondent, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth Region in writing, within twenty (20) days from the date of the receipt of this Intermediate Report, what steps the Respondent has taken to comply therewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report, the Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, any party may, within twenty (20) days from the
34 date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue

orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 31st day of March, 1949.

HERMAN MARX,
Trial Examiner.

APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

35 WE WILL BARGAIN collectively, upon request, with the TEXTILE WORKERS UNION OF AMERICA, CIO, as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment or other conditions of employment, and if an agreement is reached, embody it in a signed agreement. The bargaining unit is:

> All production and maintenance employees of our plant in Rock Hill, South Carolina, exclusive of clerical employees, superintendents, overseers, second hands, and all other supervisory employees having authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action, or having the authority set forth in Section 2 (11) of the National Labor Relations Act, as amended.

WE WILL NOT, by refusing to bargain, or in any like or similar manner, interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist TEXTILE WORKERS UNION OF AMERICA, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing,

and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

HIGHLAND PARK MANUFACTURING COMPANY
(Employer)

Dated..... By.....
(Representative) *(Title)*

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

BEFORE NATIONAL LABOR RELATIONS BOARD

EXCERPTS OF RESPONDENT'S STATEMENT OF OBJECTIONS AND EXCEPTIONS TO INTERMEDIATE REPORT AND RECOMMENDED ORDER

2. The Trial Examiner erred in finding and ruling (I. R. 16-18) that the respondent has unlawfully failed and refused and is unlawfully failing and refusing to bargain with the Textile Workers Union of America, CIO, and in directing the respondent to
36 bargain with the said Union, for that there has been laches and unreasonable and unconscionable delay on the part of the National Labor Relations Board and the General Counsel of the National Labor Relations Board in complaining that the respondent has thus unlawfully failed and refused and is unlawfully failing and refusing to bargain with the Union, a charge to such effect having been filed with the Board on or about September 13, 1946, but no complaint thereupon having been issued by the Board or the General Counsel of the Board until on or about January 10, 1949 (see complaint and petition attached and R. 322).

3. The Trial Examiner erred in finding and ruling (I. R. 16-18) that the respondent is unlawfully failing and refusing to bargain with the Union and in directing the respondent to bargain with the Union, for that even if it was ever proved or established that the Union represented a majority of the respondent's employees at the respondent's Rock Hill, South Carolina, Plant, which, as is hereinafter particularly set forth, the respondent denies, nevertheless there has now been for approximately two years no evidence whatever and no showing of any nature that a majority of the employees at the said Plant are represented by, or desire to be represented by the said Union; and that in such situation it does not effectuate, but violates, the policies of the Act to hold that the respondent is unlawfully failing and refusing to bargain and to direct that upon the Union's request the respondent shall bargain with it as the sole and exclusive representative of the present employees in the said Plant.

BEFORE THE NATIONAL LABOR RELATIONS BOARD
TENTH REGION

In the Matter of

HIGHLND PARK MANUFACTURING COMPANY

and

TEXTILE WORKERS UNION OF AMERICA, C.I.O.

Case No. 10-C-2066

Courtroom,
Federal Building,
Rock Hill, South Carolina
Tuesday, February 15, 1949

Excerpts from Transcript of Testimony and Proceedings

37 Pursuant to notice, the above-entitled matter came on for hearing at 11:00 a.m.

BEFORE:

HERMAN MARX, Esq., Trial Examiner.

APPEARANCES:

WILLIAM J. RAINS, Esq., JAMES W. MACKLE, Esq., 50 Whitehall Street, Atlanta, Georgia, appearing on behalf of General Counsel.

R. S. CAHOON, P. O. Box 2543, Greensboro, North Carolina; DAVE BURGESS, P. O. Box 689, Rock Hill, South Carolina, appearing on behalf of Textile Workers Union of America, the Charging Party.

WHITEFORD S. BLAKENEY, Esq., Johnson Building, Charlotte, North Carolina, appearing on behalf of Highland Park Manufacturing Company, the Respondent.

. . .

(The documents heretofore marked General Counsel's Exhibits Nos. 1-A to 1-K, for identification, were received in evidence.)

. . .

(The documents heretofore marked General Counsel's Exhibits Nos. 2 to 7, inc., for identification, were received in evidence.)

J. H. FULLERTON

A WITNESS called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Rains) * * *

Q. What is your occupation?

A. I am a representative of the Textile Workers Union of America.

Q. How long have you been so connected with the Union?

A. About seven years.

Q. (By Mr. Rains) Do you recall after the election that was held on May 1, 1946, the issuance of the report by Paul
38 Styles, certifying your Union as the bargaining representative of the employees?

A. Yes, sir.

Q. What did you do after that was issued?

A. There was a letter sent to Mr. Church requesting recognition of the Union according to the Decision of the Board, with a proposed contract for negotiation; asking them to meet us for negotiation.

Q. Who is Mr. Church?

A. Mr. Church is, as I understand it, general manager of the Highland Park Mills.

Q. (By Mr. Rains) Was there a refusal to meet with the Union at that time?

A. At that time Mr. Blakeney informed me that they were not accepting or agreeing to the decision or award of the Board.

Q. (By Mr. Rains) Did you ever contact Mr. Church again about recognizing the Union?

A. Yes. After that I contacted Mr. Church again requesting recognition and offering to submit to a card check on our applications—cross-check with the payroll.

Q. Had you done any work of any nature to secure additional authorization cards at that time?

A. After that—at that time Mr. Church wouldn't agree to that. I immediately then went—come back down here and had the workers re-sign, get the workers to sign up again.

Q. You say "at that time." When was the time——

A. This was along about June the—oh, along in the middle of June, or a little later than the middle of June.

TRIAL EXAMINER MARX: What year?

THE WITNESS: 1946.

Q. (By Mr. Rains) Yes.

A. And we signed up the workers on another color of application blank, so there couldn't be any confusion.

Q. Yes.

A. After a period along about I think right after September 1st, or probably the second week in September, somewhere along about the 10th,——

Q. Yes.

A. ——we had these signed up and I went to call, or wrote Mr. Church and asked recognition again on the basis of the new
39 cards that were signed up. If they would recognize those on a cross-check, and they would not.

Q. Did you make any offer to submit those cards for the purpose of that cross-check?

A. I did; yes, sir.

Q. And do you recall what their reason for their refusal was? To submit to that cross-check?

A. Mr. Church at that time, I think, informed me that they had a continuous appeal.

Q. From what?

A. From the decision of the Board.

Q. Yes.

A. I asked him what he meant by "continuous appeal," and he said well, he didn't know. That's what their attorney advised them.

So I called Mr. Blakeney, their attorney, and made the same proposition to Mr. Blakeney, and Mr. Blakeney says, "Well," he says, "we have a continuous appeal."

I asked Mr. Blakeney what he meant by "continuous appeal."

He tried to explain it to me; no matter what happened, it was in a continued appeal; anything that came up in regard to this case.

Q. Yes.

A. It didn't make any difference what it was. They would appeal it.

So I went back—he says, "You see Mr. Church." I went back to Mr. Church again and talked to Mr. Church about having a cross-check according to the applications and their payrolls, and he said no, he wouldn't do it. He was following Mr. Blakeney's advice.

Q. Yes. Now, you spoke of contacting Mr. Church on or about September 10th, as I understood, 1946, with respect to——

A. It was a little after that; little later than that. It might have been a few days later or few days before that.

Q. And that was the time you offered to submit to a cross-check of the authorization cards to the payroll?

A. Yes, sir.

Q. Do you recall about how long it was before that time that you had received all of the authorization cards signed from the various persons that were signing the cards?

A. Well, it was right along—just as soon as we got enough signed up that we were safe, in our opinion, in having the cross-check, I went to Mr. Church and Mr. Blakeney about this and we still signed up some after that.

Q. Did you at any time during the signing up of the employees tell Mr. Church or Mr. Blakeney that you were doing that?

A. Yes, sir. I told them I would do that. I told him I would do that.

Q. And what was your purpose in doing that at that time?

. . . .

A. The purpose was to show them that we wanted to do everything that we possibly could to convince the Company and go along with the Company. That we were trying to avoid any trouble and were willing to do everything that was humanly possible to convince them that the workers over there wanted a union.

. . . .

(The documents heretofore marked General Counsel's Exhibits Nos. 8 and 9 for identification were received in evidence.)

. . . .

Q. (By Mr. Rains) Mr. Fullerton, with reference to your statement that you contacted Mr. Blakeney, or the Company, around September the 10, 1946, and offered to submit to a cross-check of the authorization cards against the payroll, were there any terms connected with that offer to submit to a cross-check? By whom the cross-check would be conducted?

A. Yes. The cross-check—at the time I say the cross-check would be conducted by an impartial person. Somebody not even connected with the Company or Union.

Q. And who was or were those persons to be?

A. I don't remember as I specified any particular person. Somebody, some Conciliation person, or an arbitrator.

Q. (By Mr. Rains) Do you recall referring to a certified public accountant?

A. Yes.

Q. As being a person that could conduct the cross-check?

A. Yes.

Q. Did you have any discussion with Mr. Church with reference to that proposal, after the time you had talked to him about the cross-check offer?

A. It has been so long ago—I think I called Mr. Church
41 and talked to Mr. Church again about it.

Q. About how long after your first discussion?

A. Let me get myself straight on this, or get you straight. After what are you referring to? After September the 10th?

Q. Yes, sir.

A. About two days after September 10th, or three days, I called him again. I told him that the workers were demanding action down here and wanted to know what he was going to do about it and he said he wasn't going to do anything.

Q. And what did he say?

A. He said he wasn't going to do anything.

Q. Was there a strike along about that time?

A. There was a strike on the 16th of September.

Q. (By Mr. Rains) After the strike began, Mr. Fullerton, did you contact the Company or did you receive any communications from the Company of any kind?

A. I think a few days, or about a week after the strike began that I wrote a letter again to Mr. Church asking to meet for the purpose of seeing if we couldn't negotiate a contract and also have a card check again. I think that was about a week after the strike.

Q. Did you get any reply?

A. No.

(The documents heretofore marked General Counsel's Exhibits Nos. 11, 12, 13, 14, 16, and 17, for identification, were received in evidence.)

TRIAL EXAMINER MARX: On the record. Let the record show that the General Counsel and the Respondent's counsel have agreed on a stipulation which it has been agreed between them will be read by the reporter into the record now, and will constitute part of the record. Would you please read it, Mr. Reporter?

(The following stipulation was thereupon read:)

"It is hereby stipulated and agreed between counsel for the General Counsel and counsel for the Respondent that if Charles L. Morgan, H. A. Green, Glenn C. Webb, James Rawdon, Floyd E. Neal, W. R. Kennington, Arthur S. Poole, Louise Collins, B. L. Dawkins, Isabell Morgan, Anner
42 Thompson were placed on the witness stand they would testify as follows:

"That there is no one of 256 persons named on a list to be marked General Counsel's Exhibit No. 18 whose signature to a 'union card' was not witnessed by at least one of the individuals named above, the dates of such witnessing being the date set opposite the names of the persons on General Counsel's Exhibit No. 18.

"The 'union card' referred to is in the form and style of a sample to be marked General Counsel's Exhibit No. 19 except for the printed number appearing in the top, left-hand corner of the same and all hand-written matter appearing on the same.

"It is further stipulated and agreed that the bargaining unit during the period covered by the dates shown on the attached list consisted of 430 employees."

Trial Examiner MARX: On the record. Gentlemen, having heard your stipulation read into the record do you agree that that is your stipulation? Mr. Rains?

Mr. RAINS: I do.

Trial Examiner MARX: Mr. Blakeney?

Mr. BLAKENEY: Yes, sir.

(The documents heretofore marked General Counsel's Exhibits Nos. 18 and 19 for identification were received in evidence.)

Trial Examiner MARX: Let me ask you gentlemen one thing. You may decline to answer, if you wish. I don't know what the intent is, because I don't think it was clearly adverted to, although perhaps intended. Is there any dispute that these 256 people were members of the appropriate unit at the plant?

Mr. BLAKENEY: No, sir.

JAMES H. COLLINS, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

43 Direct examination.

By Mr. RAINS:

Q. What is your occupation?

A. In the textile industry in the Rock Hill Printing & Finishing Company.

By Mr. RAINS:

Q. Mr. Collins, are you also a notary public in addition to——

A. Yes, sir.

Q. —other things? Have you ever been called upon by the Textile Workers Union of America in Rock Hill to do any particular work of any kind for them?

A. Yes, sir.

Q. Do you recall what the situation was?

A. It was a blanket affidavit, made in blanket form. I think it was to Mr. Johnston at Charlotte.

By Mr. RAINS:

Q. Mr. Collins, I will hand you General Counsel's Exhibit 21, for identification, and ask you if you know what that is.

A. That is a photostatic copy of the affidavit that I made beginning on—let's see; March 20th, I believe, and ending on March 24, 1947.

Q. I call your attention to certain photostatic copies of signatures appearing on that photostatic copy, and ask you if you recognize those signatures and were present at the time they were placed on the original of that document?

A. Absolutely.

Q. I call your attention to a signature on the bottom of each of the pages there, James H. Collins, or J. H. Collins. Is that a copy of your signature?

A. It is.

Q. I call your attention to the last page of General Counsel's Exhibit 21, for identification, which purports to be a certification or

statement bearing the signature, James H. Collins. Is that your signature, a copy of your signature?

Trial Examiner MARX: You mean a photostatic copy.

By Mr. RAINS:

Q. Photostatic copy of your signature.

A. Yes, I believe that is a copy of the original.

44 Q. Have you read that certification? Will you do so, and state whether or not it is true?

A. That is true.

Cross-examination.

By Mr. BLAKENEY:

Q. Mr. Collins, you say you are a notary public?

A. Yes, sir.

By Mr. BLAKENEY:

Q. Are you connected with the Textile Workers Union of America, CIO?

A. Yes, sir.

Q. What is your connection with them?

A. I am a member of Local 10 of the Rock Hill Printing & Finishing Company. Also, a member on the auditing committee.

Q. Auditing committee?

A. Of that Union.

Q. How long have you been on that committee?

A. I believe this makes the third year.

Q. Do you happen to know why it was they went over and got you to be notary public on this paper?

A. Well, I live down there in that section and I will say two-thirds of the people I did know personally, and that is what they wanted——

Q. Who come and got you?

A. I was asked to come to the National Union office on Trade Street.

Q. What did you do?

A. Well, we agreed that the best possible way for everybody involved—I think the strike had been going on at that time for several

months, and the best possible way would be to begin in the commissary where they got their groceries on Thursday, and that was the Green's grocery on East White Street here in Rock Hill, and this building, this store building that they had the commissary in was partitioned off. It had part of it they used as a commissary and the other part they used as a store. I was out in the front—in the store part along with Mr. Whelchel. He was to identify the people that I didn't know personally.

45 Q. Did you stay at the commissary more than one day, or just——

A. One day, on Thursday, the day of the commissary, that is all.

Q. And the rest of the time you were riding around finding them where you could?

A. That is right.

Q. Usually at their homes?

A. Yes, sir.

Q. Now, when you would get up with a person, what would you say to him?

A. Well, I would just——

Q. For instance, Isaac Sims, what did you say to him?

A. I would tell him I had an affidavit that I would like for him to read. If he couldn't read, I would like to read it to him and see if he would like to sign it.

Q. But they all read it or you read it to them, one way or the other?

A. I did. If they wanted me to read it, I did.

By Mr. BLAKENEY:

Q. But you didn't say anything to them to the effect: Is this your voluntary act? Your free will? Do you freely assent? Do you swear to this, or do you acknowledge it in any way? None of that was done?

A. I think I was pretty clear to people; all of them.

Q. Think what was pretty clear?

A. That it was their own, voluntary act, if they signed. They had the privilege to read, or me to read it to them, which was done. If they were unable to read, I read it to them and if they accepted it like that, then they signed it. They signed the paper. If they didn't like it, they didn't sign. It was left entirely up to them, as to whether or not they wished to sign the paper.

Mr. RAINS: Yes, Mr. Examiner. I propose this amendment in amplification to that stipulation, to this effect.

"That each of 256 of the persons named on General Counsel's Exhibit 18 was seen to sign said 'Union Card' by at least one of the persons whose names are set forth in this stipulation."

46 Trial Examiner MARX: All right. Is that agreeable, Mr. Blakeney?

Mr. BLAKENEY: Yes, sir. I think the stpulation as written is clear, but it is negatively phrased, and this is an affirmative phrasing of the same thought content and I agree to this affirmative statement of it.

LOYD WHELCHEL, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. RAINS:

Q. And what is your occupation?
A. Representative of the Textile Workers Union of America.

Q. Did you enjoy that same capacity in 1947?
A. That's right.
Q. Do you recall a strike at the Rock Hill plant of the Highland Park Manufacturing Company in 1947?
A. I do.
Q. Do you know the date the strike began?
A. I believe it was September 16th, was the day of the month.
Q. 1946?
A. Yes, sir.

Q. Yes. During the course of the strike, did you at any time have any occasion to prepare any petition?
A. I did.
Q. Would you describe what you did in that respect?
A. Well, there was some worry in the early part of May, I think it was. I caused to be prepared—it was, at least, prepared under my direction, a petition which stated in effect that the employees still considered themselves members of our Union and—even though they had been out for some time on strike, they still wanted our Union to bargain for them and at the same time requested their employer to do so.
Q. I will hand you General Counsel's Exhibit 21, for identification, and ask if you recognize that document.
47 A. This is a photostatic copy of the petition that I caused to be executed.

Q. I will ask you to read the—to whom is that petition addressed?
A. To Mr. Johnston, the Highland Park Manufacturing Company in Charlotte.

Q. When that work was completed, what did you do with the original of the document you hold in your hand?
A. I mailed it to Mr. Johnston after I had had these photostatic copies made.

By Mr. RAINS:

Q. Now, with respect to the strike, do you recall the occasion of the last meeting of the Union members prior to the strike?
A. I do.
Q. When was that?
A. That was on September 15th; a Sunday.
Q. Yes. Who called the meeting?
A. Mr. Jim Fullerton.
Q. And what was discussed and done at that meeting?
A. Mr. Fullerton reported that the Company had failed to bargain, refused to bargain with the Union.

By Mr. RAINS:

Q. Proceed, Mr. Whelchel.
A. Afterwards, a motion was made and seconded and passed unanimously that the employees go out on strike on Monday at 2:00 o'clock until the Company agreed to recognize the Union and bargain collectively with their representatives.
Q. Do you know when the strike ended?

A. I believe it was the early part of May. Somewhere around the 3rd or 4th. The exact date, I don't quite remember. That's 47.
Q. And had the Company on that occasion, or after that time, recognized the Union as the exclusive bargaining agent?
A. They had not.

(The document heretofore marked General Counsel's Exhibit No. 21 for identification was received in evidence.)

48 T. W. CHURCH, JR., a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. RAINS:

Q. And what is your occupation?

A. Secretary-Treasurer of the Highland Park Manufacturing Company.

Q. Did you occupy the same position during 1946 and 1947?

A. Yes, sir.

Q. How long have you been with the Highland Park Manufacturing Company?

A. Since 1931.

Q. I believe the Charlotte office is the main office for the two plants in Charlotte and one in Rock Hill. Is that correct?

A. Yes, sir.

Trial Examiner MARX: Intent is not involved here because the Company says if I get its position correctely, we did not bargain with the Union. There is no denial of that, if I appraise the evidence so far correctly.

Mr. BLAKENEY: That is not denied.

NELL MCDONALD, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BLAKENEY:

Q. Do you work at the Highland Park Manufacturing Company?

A. Yes.

Q. Did you work there before the strike in 1946?

A. Yes.

Q. There has been introduced in evidence in this case a document which is referred to as the General Counsel's Exhibit No. 21, the same being a petition addressed to Mr. Horace Johnson and signed by a number of people, and on it there is what purports to be
49 your signature. Do you recall whether or not you did sign that paper or petition?

A. I don't recall.

Q. Well, I will show it to you and ask you if it is your signature. See if it refreshes your recollection.

A. Yes, that——

Q. Is that your signature?

A. It looks like it.

Q. Well, would you say that is a photostatic copy of your signature?

A. Yes, that's right.

Q. Now, Mr. James Collins testified in substance that you signed that in his presence after he had read it or after you had read it in his presence; after he had read it to you or after you had read it yourself, in his presence. Is that true or not?

A. That is not true.

Q. Now, did you, before the strike at the Highland Park, sign, before or about the time of, or anywhere along at that time, sign a—what's called a Union card? That is, a card joining the Union and authorizing the Union to represent you?

A. Yes.

Q. Will you state to the Examiner what were the circumstances under which you signed and why you signed? What led you to sign?

A. Well, there was one particular man right close to me——

Q. A little louder.

A. There was one particular man that run a job right close to mine, and every few minutes he would come up and call me names and he told me he was going to call me names until I signed.

Q. How long did that go on?

A. Well, I went to work sometime in May, I think, and I signed in August.

Trial Examiner MARX: What year, please? What year?

The WITNESS: During 1946.

Cross-examination.

By Mr. RAINS:

Q. Mrs. McDonald, do you recall the circumstances of your signing the petition, General Counsel's Exhibit 21?

50 A. I don't even remember that.

Q. You don't remember the petition at all?

A. No.

Q. But you recollect that is your signature on the petition?

A. Yes, that is my signature.

J. R. McDONALD, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BLAKENEY:

Q. You are the husband of Mrs. Nell McDonald, who was just on the stand?

A. That is right.

Q. Did you work down at Highland Park in 1946 and 1947?

A. Yes.

Q. Do you write?

A. No, sir.

Q. Do you read, either?

A. No.

Q. Here is a paper writing which is introduced in evidence as the General Counsel's Exhibit No. 21, and purports to be a petition and purports to bear your signature; no mark, just J. R. McDonald; and Nell McDonald's signature right under yours. Do you recall, what is your recollection as to how that paper came into her possession?

. . . .

A. They wanted me to sign it out at the commissary, and I told them I couldn't write, and I carried the paper to the house.

Trial Examiner MARX: Your house?

The WITNESS: Yes, sir.

Trial Examiner MARX: Go ahead, sir.

A. And my wife signed it for me and her both.

. . . .

By Mr. BLAKENEY:

Q. Did Mr. Jim Collins go with you?

51 A. No, sir.

Q. Did she do any signing before Mr. Jim Collins?

A. If she did, I didn't know it.

Q. What signing she did on the paper, did she do it then and there at the house in your presence?

A. Yes, sir.

. . . .

ARTHUR THOMAS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BLAKENEY:

Q. There has been introduced in evidence a list on which appears your name as having signed a Union card on August 3, 1946, witnessed by a Mr. Harry Green. Did you sign any Union card on or about August 3, 1946?

A. No, sir. It was after August.

Cross-examination.

By Mr. RAINS:

Q. You say you don't believe you signed your name?
A. No. I can't write so well. I think Mr. Green signed it for me.
Q. But he signed it with your permission?
A. That's right.
Q. Can you read?
A. No.
Q. You can't read nor write?
A. Not enough to get by. I know my name. That's about all.
Q. Can you read dates? You didn't attempt to read the card?
A. No. It weren't no use.

WALTER SWEATT, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

52 Direct examination.

By Mr. BLAKENEY:

Q. Either before or during the strike did you sign any kind of a card or slip?

A. Yes, sir; I signed a slip—a book——

Q. Did you understand, when you signed that, you were signing to join the Union, or to authorize the Union to represent you, or——

A. Whenever I signed the book, I thought it was for to keep

from striking. That's what I thought. I didn't know it was to sign no union, nor nothing like that.

JOHN SHAVER, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BLAKENEY:

Q. Had you joined the Union before the strike began?
A. No, sir.
Q. Did you join the Union after the strike began?
A. Yes, sir.
Q. What was it that caused you to join the Union?
A. Well, they put out so many nails I couldn't get there. Had five flat tires getting to work.

By Mr. BLAKENEY:

Q. Did you speak to anybody representing the Union in regard to the nails you are talking about?
A. Well, no, sir, I didn't; not until I signed the Union card so the children could go back to school again. They cut the school bus off.

Trial Examiner MARX: No. Did somebody tell you that they quit coming for that reason?
The WITNESS: They didn't tell me that they quit coming for that reason, but a man tears up his tires, he ain't going to come back.

53 Q. Did you talk to anybody about those nails at the time you joined?
A. Yes, sir.
Q. Who?
A. I told Mr. Morgan, "Let's stop the nails." He said, "All right." There wouldn't be any more.

Cross-examination.

Trial Examiner MARX: Who is Mr. Morgan?
The WITNESS: Charlie Morgan. He is in Great Falls now, I understand.
Trial Examiner MARX: Did you understand him to be connected with the Union?
The WITNESS: Yes. I knew he was connected with the Union.

By Mr. RAINS:

Q. You don't know who put those nails out there, do you?
A. No, sir.
Q. For all you know it could have been anybody?
A. Correct.

Recross-examination.

By Mr. RAINS:

Q. Mr. Shaver, can you read?
A. A little.
Q. Can you write your name?
A. Yes, sir.
Q. Do you remember talking to the investigator from the Labor Board during the strike?
A. Yes, sir.
Q. Did you tell him about the nails?
A. No, sir.
Q. Why didn't you tell him about the nails?
A. Because I thought he was on the opposite side.

JAMES EDWARD KELLEY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

54 Direct examination.

By Mr. BLAKENEY:

Q. Do you recall signing a Union card, or card authorizing the Union to represent you?
A. Yes, sir.

By Mr. BLAKENEY:

Q. There is in evidence, here, a list on which your name appears as having signed such card in the presence of Mr. Charles Morgan. Did you sign that card in the presence of Mr. Charles Morgan?
A. No, sir.

Cross-examination.

By Mr. RAINS:

Q. Who did you sign the card for, Mr. Kelley?
A. Leonhardt.

Q. Where were you when you signed it?
A. At my house.
Q. Was that before the strike?
A. Yes, sir.
Q. Did you attend any Union meetings after you had signed the Union card?
A. About one, I believe.

T. W. CHURCH, JR., a witness called by and on behalf of the Respondent, having been previously duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BLAKENEY:

Q. Mr. Church, you are connected with the Highland Park Manufacturing Company?
A. Yes, sir.
Q. How long have you been connected with that Company?
A. Since 1931.
Q. What is your capacity with respect to the Rock Hill plant of that Company?
A. Well, I am the active head. More or less the General Manager.
Q. Are you the top official in the Company who is active, in charge of the management of the Rock Hill plant?
55 A. Yes, sir.
Q. There has been introduced in evidence by the General Counsel a paper writing marked his Exhibit No. 3 entitled "An Agreement for Consent Election." I will ask you to look at it and state whether that is a copy of the paper you signed in behalf of the Highland Park Company?
A. Yes, sir.
Q. Pursuant to that so-called agreement for consent election, was an election held at the Rock Hill plant of the Company?
A. Yes, sir.

By Mr. BLAKENEY:

Q. Do you recall—and this is in your evidence, but merely to fill in the outline of matters, here—do you recall what the counted ballots were for the Union and against the Union?
A. 197 for the Union; 194 for the Company; and the challenged ballots.

Q. Among the challenged ballots, were there seven of those challenged ballots?

A. Seven ballots of the drawing-in girls that lived in Charlotte.

Q. Now, after the election had been held and the vote was, as you say, did the Company recognize and deal and bargain with the Textile Workers Union of America, CIO?

A. No, sir.

. . .

By Mr. BLAKENEY:

Q. What position did the Company take or express with respect to its dealing, recognizing and bargaining with the Union?

A. We told the Union and Mr. Joy——

Q. Who is Mr. Joy?

A. He is a Labor Board field man, I presume you would say, who came to see us.

Q. All right.

A. We told them that we would not bargain with the Union until the seven votes were counted of the employees who were on the payroll and were eligible to vote.

. . .

By Mr. BLAKENEY:

Q. After the election was held, did you have some several—different conversations with any representative of the Union?

A. Yes, sir.

Q. Who?

56 A. Mr. Fullerton, I believe is the only one.

Q. Was there more than one of such conversations?

A. Yes. There was, I would say, three or four telephone calls and probably two or three conferences.

Q. And what did Mr. Fullerton, in behalf of the Union, ask you to do?

A. Well, we had received a contract, a proposed contract from him. He asked us to bargain, discuss the contract.

Q. Did you state to him what the Company's position was with respect to that request?

A. We told him that we would not bargain with him at all until these votes were counted. That we thought the people had a right to vote. We knew they did, and it was just an arbitrary action saying they couldn't.

Q. You say you did have a conversation with a representative of the Board, Mr. Joy, on the same subject?

A. Yes, sir.

Q. What, if any, position did you express to him on that same matter?

A. We told him exactly the same thing.

Q. Now, at any time, in any conversation with either the— or any other communication, whether in writing or orally, has the Company taken any position other than that, either with Union representatives or Board representatives?

A. We told them this: We told both the Union representative and the Board representative that if they would count those votes, that we would abide by the decision and if it was in favor of the Union, we would bargain, and we were led to believe they would be counted.

Q. Well, what do you mean by "led to believe they would be counted"?

A. Well, the day after the election, the night of the election, I should say, Mr. Joy asked several of us to meet in our office the next morning to discuss these challenged votes.

We went down there and had a short talk with him.

Q. What did he tell you was the purpose of him asking you to meet?

A. Well, he wanted to ask some questions about these girls. The votes that he had——

Q. What girls?

A. The drawing-in girls, seven of which he had challenged, and he had the votes—ballots in a sealed envelope.

Q. Seven of which had been challenged?

57 A. Yes, sir.

Q. All right. Now, what was said and done on the occasion of that meeting?

A. Well, he asked a good many questions about the girls and we answered them the best that we could, and we left with the understanding that we would be allowed to present evidence and facts to the Labor Board in regard to them and that when it was decided that the votes would be opened, that they would be opened in Atlanta in front of a representative of the CIO and a representative of the Company.

Q. On that occasion, did you request opportunity to present the facts and the evidence, or not?

A. Yes, sir.

Q. How?

A. Yes, sir.

Q. Did you understand that you were then and there being given such opportunity?

A. Well, I understood we would be given opportunity.

Trial Examiner MARX: Mr. Blakeney, his understanding, I will tell you right now, may not be of very much assistance unless he relates exactly what Mr. Joy, to the best of his recollection, told him bearing on the subject, because his understanding may very well be a conclusion and would not be helpful.

By Mr. BLAKENEY:

Q. State to the best of your recollection what was said in regard to your request to have opportunity to present the facts and the evidence in regard to the eligibility of these seven people.

A. Well, I can't remember the exact words, but I asked that we be given the opportunity to present the complete facts and the complete picture to either the Board or whoever it was necessary.

I can't remember Mr. Joy's words, but I think he said that we would be given that opportunity.

Q. Now, irrespective of what you think, will you state what was the substance of what he communicated to you on whether you would or wouldn't have an opportunity.

A. Well, he said we would have, or words to that effect.

Q. Would have what?

A. Opportunity to present the facts.

Q. All right. Now, did you, on that occasion, at that meeting, present the facts or not?

A. No, sir. We didn't go into any detail at that time.

Q. Has the Company ever been given an opportunity to
58 give facts and evidence in regard to the—in regard to whether or not the seven persons you refer to were or were not employees of the Rock Hill plant?

A. No, sir.

Q. At the time of the election.

A. No, sir.

Trial Examiner MARX: Excuse me. What are drawn-in girls? What did you mean by that phrase?

The WITNESS: They are girls that take each thread and draw in a harness. It's a ticklish hand job. Taking a thread of yarn and putting it on a hook and drawing it in a metal harness; wire.

By Mr. BLAKENEY:

Q. Now, there was a strike commenced at the Company's Rock Hill plant about September 16, 1946?

A. Yes, sir.

Q. Did a substantial number of the Company's employees, at the beginning of that strike, remain away from work?

A. Yes, sir.

Q. Do you know whether a majority of them did remain away from work?

A. Yes, sir.

By Mr. BLAKENEY:

Q. Now, along about the time of the strike did the Union or the Board, or any representative of the Board, suggest to you or any

other representative of the Company, that the Union be recognized and bargained with upon the basis of a check of alleged new or recent Union cards signed up?

A. I don't remember just the date, but Mr. Fullerton asked that we do that.

Q. Mr. Fullerton asked that you do that?

A. Yes, sir.

Q. Did you agree to do so?

A. No, sir.

Q. What did you state was your position with respect to that?

A. We told him that we would rely on the election and——

Q. What did you state was your position or reason for not agreeing to the card check proposition?

A. Well, we wouldn't know the authenticity of the cards.

59 Q. Of the cards.

A. They weren't going to bring the cards and show them to us. They proposed we have an arbitrator or auditor, I believe, to check the cards against the payroll.

Q. What, if anything, would you be able to know as to whether the signatures were genuine?

A. We wouldn't know.

Q. Later on was there a petition presented to the Company with a large number of names on it and purporting to have been notarized?

A. Yes, sir.

Q. What position did you take with respect to that petition?

A. We didn't recognize that.

Q. Well, but what? What did you——

A. We didn't recognize that because we didn't know whether those people had signed that or whether they had been forced to sign it, coerced——

I did tell Mr. Fullerton.

By Mr. BLAKENEY:

Q. You told him what?

A. We questioned the signatures and questioned whether they were signed with their own free will and accord.

Q. Did you make any inquiry or investigation as to the person who purported to act as notary on it?

A. Yes, sir. We asked about Mr. Collins. We found out that he was a Union fellow.

Q. What do you mean, "A Union fellow"?

A. Belonged to the Union over to the bleachery.

Q. Yes.

A. And that put more doubt in our mind. Whether they would get a notary public with that connection.

Q. Well, did you make any further inquiry or investigation as to Mr. Collins' activity in connection with the signing of the paper—of the petition?

A. There was quite a bit of talk about it, but I don't believe I remember anything about it.

By Mr. BLAKENEY:

Q. Now, did you, at any time, decline to consent to and abide by a new election?

A. Yes, sir. I think that the Union proposed a new election. I believe, And we still took our stand that we should get the final result of the old election by counting the votes and we
60 agreed if they did count the votes, we would abide by that.

Trial Examiner MARX: Was this during the strike, sir?

The WITNESS: I believe it was. I believe it was.

Cross-examination.

By Mr. RAINS:

Q. Mr. Church, you said the night of the election Mr. Joy called a meeting for the next morning?

A. He just asked that we meet the next morning. He wanted to ask us some questions about these girls.

Q. Yes. Of course, all the parties knew that some ballots had been challenged in the election?

A. Yes, sir.

Q. Did you meet at the Rock Hill plant?

A. In the Rock Hill plant; yes, sir.

Q. In the office of the plant?

A. Yes, sir.

Q. And I believe you stated that he asked a great many questions.

A. He asked to see the payrolls, and where these girls live, and questions of a similar nature; yes, sir.

Q. But do you recall saying that he asked a great many questions?

A. Well, I don't know how many, but—Yes; I would say he asked quite a few questions.

Q. But you say you didn't go into any detail at that time?

A. No, sir. It was our understanding that we would later have a chance to put the facts before the Board in Atlanta. That he was up there to run the election.

By Mr. RAINS:

Q. Now, was Mr. Blakeney present at that meeting?

A. Yes, sir. We called him down to listen in. He wasn't there the night before.

Q. No, but he was there the morning in the meeting, following the election, with Mr. Joy?

A. Yes, sir.

Q. And I believe the Union was represented in the meeting, too, were they not?

A. Yes, sir.

61 Q. I think the majority of the representatives were Company people, weren't they?

A. I wouldn't say that. I don't remember how many of the Union people were there. We had our superintendent and myself and Mr. Blakeney.

Q. And who else for the Company; do you recall?

A. The general superintendent from Charlotte. Yes. He was there.

Q. Did you have your Company observers in the election? Were they in the meeting?

A. I don't remember. They may have been. I don't know.

Q. You don't remember? I understood you to say that you think that Joy said you would be given an opportunity to present the complete facts.

A. He either said that or something to that effect. We were led to believe that.

Q. And you say you have never been given an opportunity to present the facts since that time?

A. No, sir.

Q. Do you have any recollection or knowledge of the request of the Respondent to the Regional Director on May 8th stating that if the challenges should be resolved against the Company, then they wanted a formal hearing before a Trial Examiner on the matter?

A. That we asked that?

Q. Yes. The Respondent.

A. Yes, sir.

Q. Then you recall the certification came out on May 29th, 1946?

A. I remember it coming out.

Q. That was some 28 days later; from May 2nd.

A. Yes, sir.

Q. Did you, at any time, from May 2nd until May 29th, seek to send to the Regional Director any of this evidence you claimed bore on the status of the challenged persons?

A. I don't remember that we did. We didn't hear anything from them. It was our understanding that we would have an opportunity to do this.

Q. Were you waiting to see whether the challenges would be resolved against the Respondent before you put on the evidence with respect to the challenged persons?

A. I don't know about that.

Q. Mr. Church, then, as nearly as you can recall, what
62. did Mr. Joy say when he opened the meeting or first commented at the meeting on May 2, 1946?

A. I couldn't answer that. It would be a guess.

Q. Well, tell me again, what did you understand was the purpose of that meeting?

A. I understand the purpose of the meeting was for him to get some information in regard to these challenged ballots.

Trial Examiner MARX: Did you give him the information?

The WITNESS: We gave him anything he asked for; yes, sir.

Trial Examiner MARX: No. Did you give him all information in your possession about those challenged ballots?

The WITNESS: I wouldn't say we gave him all in our possession. We gave him everything he asked for.

Trial Examiner MARX: Can you tell me now what you gave him?

The WITNESS: No, sir; I cannot. Sorry. I remember he wanted to check the payrolls. He did that. That's one thing I definitely remember.

Trial Examiner MARX: But did you tell him what your position was on the challenged ballots?

The WITNESS: We told him that those girls were supposed to vote, because the day before the election him and the Union Committee was in the office, met with us, they went carefully over the payroll and passed on everybody on the payroll, that they could vote, the payroll of April 12th. That is what was asked for in the Consent Election.

Trial Examiner MARX: You gave him that information?

The WITNESS: Yes, sir.

Trial Examiner MARX: My question is, if you know, whether Mr. Joy looked at the payroll after you expressed the view to him that these challenged seven should have voted?

The WITNESS: I feel sure he did. I am sure he did.

Trial Examiner MARX: Go ahead, Mr. Rains.

By Mr. RAINS:

Q. There was some discussion at the meeting with respect to these same girls having been transferred from Charlotte to Rock Hill on previous occasions in previous years, was there not?

63 A. Yes, sir, I remember that.

By Mr. RAINS:

Q. Do you know who carried on the conversation, Mr. Church, with respect to the previous operations of the girls from Charlotte in this Rock Hill plant?

A. Well, Mr. Joy and either myself or our superintendent down there, I don't know which.

Q. Did you discuss the applicability of group insurance with respect to those employees at this plant and at the Charlotte plant as it applied on former occasions when those girls had come from the Charlotte plant to the Rock Hill plant?

A. I don't remember that, but there is possibility we did.

Q. Do you remember discussing anything about mileage being paid to those girls?

A. I know now that was brought up and we told Mr. Joy there was mileage paid.

Q. From Charlotte to Rock Hill?

A. That is right.

Q. And with respect to the hours that were worked including the driving time from Charlotte to Rock Hill do you recall whether you stated anything to Mr. Joy in that regard?

A. That is right. I also stated to Mr. Fullerton on questioning from him.

Q. On the same occasion?

A. He asked me why we did it. I told him we had to do it because there wasn't any drawing-in hands in Rock Hill.

Q. Do you recall discussing with Mr. Joy on that occasion as to the piece work basis or hourly rate record of the Charlotte plant as applying to these seven girls and it being different from the piece work rate or the hourly rate as applied to the Rock Hill plant?

A. I don't remember it, but we probably did, because they were paid piece work rate at Charlotte and we paid hourly rate at Rock Hill.

Q. Do you recall displaying any Social Security records at that time to Mr. Joy?

64 A. I don't recall, but we probably did if he asked for them. They would have been available.

Q. Do you remember discussing with Mr. Joy the differences in the manner in which the girls from Rock Hill were paid and the other girls; the drawing-in hands in the Rock Hill plant were paid

different in check, time of payment, or period covered, anything of that sort?

A. I think I do. I don't remember the detail.

By Mr. RAINS:

Q. You say you, rather the Company, excuse me, wouldn't do anything about this offer of the Union to submit itself to a card check of its application cards against the payroll because you didn't know as to the authenticity of the cards or whether or not the persons had signed under coercion——

A. That is right.

Q. . . . Did you have access to any samples of handwriting of most of your employees in this plant?

A. We would have, yes.

Q. Which could have been submitted to an arbitrator for comparison?

A. Probably could have. Well, now, I don't say all the employees. The ones that had signed up for insurance or something like that, we probably have their signature.

Q. Does the Company pay by check?

A. Yes, sir.

Q. Do the employees endorse the checks?

A. They are supposed to. These stores consider them as cash items, though.

Q. And now we are referring to General Counsel's Exhibit 21 when we refer to the Petition, are we not? That is the photostatic copy which has been introduced in evidence heretofore.

A. Yes.

Q. I want to be sure.

A. We got the original copy.

MILDRED FLOYD, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

65 Direct examination.

By Mr. BLAKENEY:

Q. Where do you work?

A. Highland Park, No. 2, Rock Hill.

Q. What is your job?

A. Drawing-in hand.

Q. How did you come to be a drawing-in hand at the Rock Hill plant for the Highland Park Company?

A. I asked for a job there. Had my sister ask for a job.

Mr. RAINS: I think this point, Mr. Examiner, seems to be objectionable; this early point.

Trial Examiner MARX: Well, the time hasn't been fixed.

Mr. RAINS: All right.

Trial Examiner MARX: As to when she applied for a job. It is usually preliminary to find out who a witness is. I will assume the question is of that nature.

Mr. RAINS: All right.

By Mr. BLAKENEY:

Q. What is the first day you worked at the Rock Hill plant, if you remember?

Trial Examiner MARX: Now, Mr. Blakeney, I am going to ask you for the purpose of offering this testimony. What is the object of that question?

Mr. BLAKENEY: To prove that she was on the payroll of this plant prior to April 12, 1946, the date fixed in the consent election agreement as the date for determination of who should be entitled to vote.

Trial Examiner MARX: Would the purpose of that testimony be to present facts enabling the Board to determine whether in fact she was entitled to vote, contrary to the ruling of the Regional Director?

Mr. BLAKENEY: Yes, sir, I think that would necessarily follow. The Regional Director ruled she wasn't entitled to vote, and I want to present evidence to the effect that she was all that the consent agreement called for in defining who could vote; namely, that she was an employee of the Rock Hill plant on April 12, 1946, that being the definition in the consent election agreement as to who should vote.

66 (The document heretofore marked Respondent's Exhibit No. 1, for identification, was received in evidence.)

Trial Examiner MARX: I will permit you to make any offer of proof you feel you wish to, but on the basis of the offer of proof as you gave with respect to this witness, I am prepared to make a

ruling and, also, if you wish to extend the offer to any other witnesses whom you wish to name for the record, in case the objection is sustained.

Mr. BLAKENEY: Yes.

Trial Examiner MARX: I have given the matter some consideration during the recess, and I have had occasion to read in the brief time available to me some cases, and I have come to the conclusion that the objection to testimony of that sort should stand.

My reasons are, in brief, but not exhaustively stated, that if the agreement which was entered into by the Respondent is to have any meaning at all, it should be given effect. Moreover, the Board's Rules and Regulations, more particularly Section 203.54 of Series 5, expressly provides that the finding of the Regional Director shall be conclusive.

The taking of testimony from the last witness as to her actual voting status would amount to a subversion, in my judgment, of the Rules of Administrative Procedure and of the sanctity to be given to the agreements responsibly entered into by the parties.

For the reasons indicated, I feel it isn't open to me to enter into an inquiry as to the actual voting status of the seven employees.

RESPONDENT'S OFFER OF PROOF

Mr. BLAKENEY: In view of the Examiner's last ruling, the Respondent makes the following offer of proof; namely, that if E. D. Newton, Arthur Jerrett, Fred McNinch, T. W. Church, Jr., Gertrude Boyd, Virginia Moore, Pauline Rice, Josephine Wilson, Phronie Fisher, Myrtie Corley, Louise Bailes, Mildred Floyd, Gretchen Fisher, and Alec McFadden were permitted to testify, and the Respondent offers said witnesses as being present and ready to testify as follows:

That they would testify that during the early part to the
67 middle of March, 1946, the Rock Hill plant of the Respondent was commencing a change-over in the nature of its product from plain goods to fancy and striped goods; that such change-over in the nature of the plant's product called for and required the use of additional drawing-in hands; that drawing-in hands were scarce and difficult to find at that time; that the Rock Hill plant had been inquiring for some weeks prior to the period above mentioned of all persons who sought employment with it as to whether they were drawing-in hands or could do drawing-in work; that the

Rock Hill plant had made diligent inquiry in various directions in an effort to obtain drawing-in hands; that the Company had not been able to obtain any additional drawing-in hands in the immediate vicinity of Rock Hill; that shortly prior to the middle of March, 1946, the Company's Charlotte plant had installed and was putting into operation certain new machinery known as Barber-Coleman Automatic drawing-in machines; that the Company Charlotte plant at the time referred to was and for many years had been a fancy goods or striped goods plant, and by reason of that being the nature of the Charlotte plant's product, had for years employed a number of drawing-in hands, such number being in the neighborhood of 75 such hands; that as the result of the installation and commencement of the operation of the machines above referred to, the need in the Charlotte plant for drawing-in hands was declining and that a large proportion of said drawing-in hands were not working full time at about the middle of March, 1946; that Mr. Newton, the superintendent of the Rock Hill plant, at various times had consulted and talked with the superintendent of the Charlotte plant in regard to getting from some source drawing-in hands for the Rock Hill plant in view of changing over of the nature of the product at the Rock Hill plant; that the superintendent of the Charlotte plant informed Mr. Newton, superintendent of the Rock Hill plant, as to the situation in the Charlotte plant in respect to the installation and beginning operations of the aforesaid machines, and that the superintendent of the Rock Hill plant then and thereupon, about the middle of March, 1946, communicated with four of the persons named above, namely, Gertrude Boyd, Virginia Moore, Pauline Rice, and Josephine Wilson, and inquired of them as to whether they would be willing to come to work at the Company's Rock Hill plant as drawing-in hands at the Rock Hill plant, and that all of the four stated that they desired to do so; that thereupon
68 said four employees quit their employment at the Company's Charlotte plant and hired as employees to the Company's Rock Hill plant; the first day of their working at the Company's Rock Hill plant being March 25, 1946; that shortly thereafter others of the above named individuals, namely, Phronie Fisher, Myrtie Corley, Louise Bailes, and Mildred Floyd notified the superintendent of the Rock Hill plant that they, too, would like to become hired as drawing-in hands at the Company's Rock Hill plant; that they stated that the reason they desired to do so was that they had been told by Gertrude Boyd, Virginia Moore, Pauline Rice, and Josephine Wilson what the drawing-in work was at the Rock Hill plant, the earnings to be had, and the prospects for continued employment in the drawing-in work; that they knew that the drawing-in work in the Charlotte plant was diminishing and curtailing.

Mr. BLAKENEY (Continuing): That upon the above-named

Phronie Fisher, Myrtie Corley, Louise Bayles, and Mildred Floyd notifying the Superintendent of the Rock Hill plant that they desired to become drawing-in hands at the Rock Hill plant, they were hired in such capacity.

That they quit their job at the Charlotte plant and became hired as employees at the Company's Rock Hill plant. That the first days that they worked at the Company's Rock Hill plant were respectively as follows:

Myrtie Corley, April 1, 1946;
Mildred Floyd, April 1, 1946;
Louise Bayles, April 6, 1946;
Phronie Fisher, April 8, 1946.

That thereafter two additional persons who were working as drawing-in hands at the Company's Charlotte plant; namely, Gretchen Fisher and Ellie McFadden; likewise and in similar manner made application to the Superintendent of the Company's Rock Hill plant for work as drawing-in hands in the Rock Hill plant and were similarly hired in at the Rock Hill plant and similarly quit their employment at the Company's Charlotte plant.

That the first days on which the two last named individuals worked at the Rock Hill plant were May 6, 1946 in each instance.

That upon thus quitting their employment in the Charlotte plant, and becoming hired as employees at the Rock Hill plant, the above-named individuals severed all connection of every nature with the Charlotte plant and retained no connection of any nature therewith.

69 That more particularly they were all taken off the payroll of the Charlotte plant. That employment severance cards were made out for all of them and filed in the Company's Charlotte plant.

That their Employee Insurance which they had been carrying at the Company's Charlotte plant was terminated and cancelled and that on all reports and records kept by the Company's Charlotte plant with respect to such employees; namely, Federal Social Security cards, and reports, and North Carolina State Unemployment Compensation cards and reports, their names were dropped as of the dates they quit their work in the Charlotte plant.

That all of the named women, upon being employed as above stated at the Rock Hill plant, were put on the payroll of the Rock Hill plant and became listed as employees of the Rock Hill plant on all the Rock Hill plant's Social Security cards and reports and State Unemployment Compensation cards and reports.

That they were offered the right to take Employee Insurance at the Rock Hill plant and accepted such insurance and applied therefor but were required to wait 60 days before obtaining such

insurance and that such 60-day wait was uniformly required of all persons who made application for employment and became hired as employees at the Rock Hill plant.

That the Rock Hill plant, from the date of the said individuals commencing work in the Rock Hill plant, began to report them on all its employee reports to State and Federal Government.

That they, from such dates, began to be figured in on the Rock Hill plant's Workmen Compensation Insurance premiums.

That they they, from the date of their commencing work at the Rock Hill plant, began to be paid by check drawn on a Rock Hill bank, as are all other employees of the Company's Rock Hill plant.

That the only differences in any respects between these individuals, after they commenced to work at the Rock Hill plant, the only differences between them with respect to having status of employees at Rock Hill and other persons working at the Rock Hill plant are that they came from longer distance to work than most of the Rock Hill employees but that many other of the Rock Hill plant employees did come for distances of considerable size to their work and some of the other employees as far as these.

70 That although these individuals continued to live in Charlotte, North Carolina, that they did not live in any property or houses belonging to the Company's Charlotte plant but in houses and homes of their own.

That they were unable to find residence or living accommodations in Rock Hill.

That a factual difference between the pay of the individuals named and other drawing-in hands at the Company's Rock Hill plant is that these individuals draw more pay than the other drawing-in hands at the Rock Hill plant. That there are only—that there were, at the times referred to above, and still are, only two to four other drawing-in hands, in addition to the individuals named.

That the individuals named also are paid at their regular rate of pay for the time elapsing while they are enroute to and from Charlotte.

That one of the individuals named; namely, Mrs. Virginia Moore; furnishes an automobile in which some of the individuals named ride to and from Charlotte regularly and that the Company reimburses Mrs. Moore for her mileage upon the use of her car at the rate of six cents per mile.

That the greater pay above referred to received by the persons named and paid by the Company to them was the only basis upon which the Company was able to hire such persons to work in its Rock Hill plant, they being unwilling to work in the Rock Hill plant upon any lower terms and the Company being unable to obtain

any other drawing-in hands to do equivalent work on any terms better to the Company.

That the persons named, being experienced and skilled in drawing in work on fancy and striped goods, are the only drawing-in hands in the Company's Rock Hill plant who are so skilled and experienced and the only drawing-in hands who can handle such work, and that they are essential and indispensable employees to the Rock Hill plant in that sense and for that reason.

That the individuals named from the dates above referred to on which they commenced to work at the Company's Rock Hill plant have at all times and ever since worked as such employees at the Company's Rock Hill plant regularly and without interruption except for such as may have been occasioned briefly by illness, or the like; except that one of the above-named, Mrs. Myrtie Corley quit the Company's employment on August 2, 1946, and has never worked for the Company since, and Mrs. Louise Bayles quit
71 the Company's employment on September 15, 1946 and has never worked for the Company since.

. . . . . .

That the aforenamed Myrtie Corley, upon quitting her work at the Rock Hill plant, immediately reapplied for employment as a drawing-in hand at the Charlotte plant and was refused employment there for the reason that drawing-in hands were—no additional drawing-in hands were needed at that plant.

That likewise Mrs. Louise Bayles, after quitting her employment at the Rock Hill plant, applied for employment as a drawing-in hand at the Charlotte plant and was refused such employment for the same reason.

That the persons named in all respects share in the activities, social and otherwise, with the other employees of the Rock Hill plant. That they contribute to various mutual and common employee funds, along with other Rock Hill employees.

That other Rock Hill employees, on occasion, engage in social activities with the individuals named in the homes of the said individuals in Charlotte, and that the circumstances with respect to such mutual interests, as between the individuals named and the other Rock Hill employees are no different from similar relationships between Rock Hill employees not involving—

. . . . . .

Mr. BLAKENEY: That the persons named have participated in all wage increases that other Rock Hill employees have participated in since the dates that they commenced to work at Rock Hill.

That all letters and communications and notices which have gone from the Company to any other employees of the Rock Hill plant; general notices, communications; have likewise gone to these

individuals. That one such example was a letter written by the Company prior to the election referred to in this proceeding held on May 1, 1946, in which the Company, among other things, urged all employees to vote in said election. That the individuals named received such letter, along with all other employees of the Rock Hill plant.

. . . .

Mr. RAINS: I do not wish to be misunderstood as agreeing that the offer of proof as such would be accepted as proof upon any review and that in the event of any review and a possible over-
72 ruling of your decision that the offer of proof would automatically be accepted as the truth of the situation.

TRIAL EXAMINER MARX: Well, now, I think that it is pretty plain that an offer of proof is not proof.

. . . .

(The documents heretofore marked General Counsel's Exhibits Nos. 10 and 15, for identification were received in evidence.)

. . . .

(The document heretofore marked General Counsel's Exhibit No. 24 for identification was received in evidence.)

. . . .

TRIAL EXAMINER MARX: . . . I am interested in learning, incidentally, for your information, wholly aside from the Regional Director's determination there has been proof that the Union represents the unit in the plant—there is no question that there has been no bargaining. There has been refusal to bargain unless I misunderstood the testimony. I don't believe I did.

Mr. BLAKENEY: No, sir.

. . . .

GENERAL COUNSEL'S EXHIBIT 2

United States of America
National Labor Relations Board

Case No. 10-R-1803 Docketed 3-28-46.

PETITION FOR CERTIFICATION OF REPRESENTATIVES

The undersigned Petitioner hereby alleges that the Employer named below has refused to recognize Petitioner as the exclusive collective bargaining agent of all the employees in the bargaining unit hereinafter described and that such refusal has given rise to a question concerning representation affecting commerce within the meaning of the National Labor Relations Act. Pursuant, therefore, to Section 9(c) of said Act, Petitioner requests the National Labor

Relations Board to investigate such controversy and certify to the parties the name or names of the representatives designated or selected by the employees.

73 1. Name of employer: HIGHLAND PARK MANUFACTURING COMPANY, PLANT No. 2, ROCK HILL, SOUTH CAROLINA.

2. Address of establishment: 300 East 16th St., Charlotte, N. C.

3. Industry: MFRS. COTTON TEXTILES, PRINTS.

4. Petitioner: TEXTILE WORKERS UNION OF AMERICA, CIO.

5. The alleged appropriate bargaining unit INCLUDES ALL PRODUCTION AND MAINTENANCE WORKERS EXCEPT FOR SUPERVISORS, FOREMEN AND OFFICE CLERICAL WORKERS.

6. The Unit contains approximately 350 employees, of which number more than 51% have designated or selected petitioner as their bargaining representative.

7. The following individuals or labor organizations claim to represent employees in the Unit: TEXTILE WORKERS UNION OF AMERICA, CIO, 1011 Independence Building, Charlotte, N. C.

By: R. R. LAWRENCE,
Regional Director.

TWUA-CIO, 1011 Independence Bldg.,
Charlotte, N. C. Telephone 3-0731
Contact Field Representative,
JAMES H. FULLERTON,

TWUA-CIO, 1011 Independence Bldg.

Subscribed and sworn to before me this 26th day of March, 1946, at Charlotte, N. C.

JAMES FULLERTON,
My Commission expires Aug. 22nd, 1947.

GENERAL COUNSEL'S EXHIBIT 3

United States of America
National Labor Relations Board

In the Matter of HIGHLAND PARK MANUFACTURING COMPANY
Case No. 10-R-1803

AGREEMENT FOR CONSENT ELECTION

The undersigned Employer (herein called Employer) and the undersigned labor organization, subject to the approval of the Regional Director for the National Labor Relations Board (herein

called the Regional Director and the Board respectively), HEREBY AGREE AS FOLLOWS:

74 1. SECRET BALLOT—An election by secret ballot shall be conducted under the supervision of the Regional Director, among the employees in the Unit defined below, at the indicated time and place, to determine whether or not the employees desire to be represented by the undersigned labor organization. Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board; provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility of voters, raised by any party hereto relating in any manner to the election.

Time and place of election: May 1, 1946. Place—Old Slasher Room in Company's plant in Rock Hill. Time—

Entire third shift: 6:00 A. M. to 7:00 A. M.;

First shift: Top floor, 8:00 A. M. to 9:00 A. M.; Main floor, 9:00 A. M. to 10:00 A. M.; Basement, shop and outside, 10:00 A. M. to 11:00 A. M.;

Second shift: Top floor, 3:30 P. M. to 4:30 P. M.; Main floor, 4:30 P. M. to 5:30 P. M.; Basement, shop and outside, 5:30 P. M. to 6:00 P. M.,—all on May 1, 1946.

2. THE UNIT

All the Company's production and maintenance employees at its Rock Hill, South Carolina, plant, exclusive of clerical employees, superintendents, overseers, second-hands, and all other supervisory employees having authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action.

(herein called the Unit) constitute a unit appropriate for the purposes of collective bargaining.

3. ELIGIBLE VOTERS—The eligible voters shall be those employees included within the Unit, *who appear on the Employer's pay roll for the period* indicated below, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election. At a date fixed by the Regional Director, the Employer will furnish to the Regional Director an accurate list
75 of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

Pay-roll period for eligibility—April 12, 1946.

4. NAMES ON BALLOT—In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot:

First: YES.
Second: NO.
Third:
Fourth:

5. NOTICES OF ELECTION—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The Employer, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

6. OBSERVERS—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the non-supervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally. As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to an observer designated by each party for such purpose.

7. OBJECTIONS, CHALLENGES, REPORTS THEREON—Objections to the conduct of the ballot, or to a determination of representatives based on the results thereof, may be filed with the Regional Director within five days after issuance of the Tally of Ballots. Copies of such objections must be served upon the other parties. The Regional Director shall investigate the matters contained in the objections and issue a report thereon. If objections are sustained the Regional Director may in his report include an order voiding the results of the election and in that event, shall be empowered to conduct a new election under the terms and provisions of this
76 agreement at a date, time, and place to be determined by him.

If challenges are determinative of the results of the election, the Regional Director shall investigate the challenges and issue a report thereon.

8. CONSENT DETERMINATION OF REPRESENTATIVES—The Regional Director shall, and when appropriate, issue a Consent Determination of Representatives to the parties, setting forth name of the labor organization which has been designated and selected as the exclusive representative of all the employees in the Unit for the

purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

9. RUN-OFF PROCEDURE—In the event more than one labor organization is signatory to this agreement, and in the event that no choice on the ballot in the election receives a majority of the valid ballots cast, the Regional Director shall conduct a run-off election at a time and place to be determined by him. Said run-off election shall be in accordance with Article III, Section 11 (b) and (c) of the Board's rules and Regulations.

HIGHLAND PARK MANUFACTURING COMPANY,
Employer,

By (S.) T. W. CHURCH, JR., Treas.

TEXTILE WORKERS UNION OF AMERICA, CIO,
Petitioner,

By (S.) J. H. FULLERTON, *Dist. Rept.*
Textile Workers Union of America, C.I.O.

Recommended:

(S.) A. C. JOY,
Field Examiner, National Labor Relations Board.

Date executed, April 10, 1946.

Date Approved, April 10, 1946.

(S.) PAUL L. STYLES,
Regional Director, National Labor Relations Board.

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77 GENERAL COUNSEL'S EXHIBIT 7

United States of America

Before the National Labor Relations Board, Tenth Region

In the Matter of HIGHLAND PARK MANUFACTURING COMPANY and TEXTILE WORKERS UNION OF AMERICA, CIO

Case No. 10-R-1803

CONSOLIDATED REPORTED ON CHALLENGED BALLOTS AND OBJECTIONS CONSENT DETERMINATION OF REPRESENTATIVES

The Challenged Ballots

In the election conducted on May 1, 1946, by an agent of the undersigned, pursuant to an Agreement for Consent Election, the Taliy of Ballots revealed the following results:

Valid votes cast for Textile Workers Union of America [1] 197

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[1] Hereafter called the Union.

Valid votes cast against the Union	194
Challenged ballots[2]	11

The challenge and ballots were thus sufficient in number to affect the results of the election.

The undersigned has caused an investigation to be made of the challenged ballots and hereby finds as follows:

Louise Jackson. Jackson was challenged by the Field Examiner when she appeared at the polls to vote but her name was not found on the list of eligible voters. The Company's records revealed that Jackson worked in all weeks during 1946 until the week of April 6th. She did not work during the weeks of April 6th and 13th, but returned to work during the week of April 27th and was still employed on the day of the election. There is no record to indicate, and no claim made by anyone, that Jackson had quit or otherwise terminated her employment. Jackson retained her status as an employee during the week of April 13th and therefore was entitled to cast a ballot.

78

James Pressley. Pressley was challenged by the Field Examiner when he appeared at the polls to vote but his name was not on the list of eligible voters. Pressley was separated from the Company's employ on March 7, 1946; records dated that day showing that he had voluntarily quit and drawn his pay through a special payment on that date, rather than being paid along with the other employees. Pressley was rehired during the week of April 20, 1946. Not having retained his employment status through the week of April 13, 1946, Pressley was not an eligible voter and was not entitled to cast a ballot.

Gertrude Boyd, Myrtie Corlie (or Corley), Phronie Fisher, Mildred Floyd, Virginia Moore, Pauline Rice and Josephine Wilson. These employees were all challenged by the union on the alleged grounds that they are on loan from the Company's plant at Charlotte, North Carolina and, therefore, are not regular employees of the Rock Hill plant that is involved in these proceedings.

All of these employees are draw-in hands. At its Rock Hill plant, the Company employs twelve draw-in hands; four being resi-

[2] Nine of the challenged ballots involved questions as to the eligibility of certain persons to cast ballots. Two involved a challenge of the correctness of the Field Examiner's rulings as to the meaning of the markings on the ballots. It would perhaps have been better had the Tally of Ballots reflected the Field Examiner's rulings, leaving any disagreement with such ruling to be treated as objections to the election. However, under the circumstances, the ballots will be treated as challenged ballots.

dents of Rock Hill and eight (the seven challenged voters and one other [3]) all of whom reside at Charlotte, N. C.

The Company is at present engaged in converting its production at Rock Hill from plain to striped cloth. In connection with this, the services of a number of draw-in hands are required. This work began about the middle of March 1946. Boyd, Moore, Rice and Wilson began working at Rock Hill during the week of March 30, 1946. Corley and Floyd began the following week and Fisher began the week following that. Thus, all seven were working at the Rock Hill plant during the week of April 13th.

It has been the practice for many years for the Company to send draw-in hands from its Charlotte plant to Rock Hill to assist with the draw-in work that is necessary at the latter plant. Several of the employees involved here had been assigned to Rock Hill from time to time for several years. It was customary for the
79 Rock Hill management to ask for these workers by name whenever draw-in assistance was needed.

The Company contends that the employees have always severed their employment relationship with the Charlotte plant when they have worked at Rock Hill, and that they are bona fide employees of the Rock Hill plant. Although workers assigned from Charlotte to Rock Hill have terminated their group insurance at the Charlotte plant, they have always returned to employment at the Charlotte plant upon completion of the assigned tasks at Rock Hill. No formal application for reemployment has been required; merely a notification to their supervisor that they were finished at Rock Hill. Such assignments have varied from a few weeks to a few months. At the time the employees would be assigned at Rock Hill, the length of stay was indeterminate. The same conditions prevailed when the employees involved here were sent to Rock Hill to begin the current assignment there.

All of the affected employees commute daily from their homes to Rock Hill (a distance of about 28 miles each direction), traveling in automobiles driven by two of the group. The company reimburses these drivers for mileage at the rate of 6¢ per mile. All members of the group are paid for two hours per day for traveling time. Although the normal work hours of the first shift of the plant are from 7 a.m. to 3 p.m. the employees here involved work a special shift of 8 a.m. to 4 p.m. The Company has no comparable arrangements with any other employees.

Although the affected employees are paid on an hourly basis when they work in Rock Hill, as contrasted with a piece-work basis when working in Charlotte, the hourly rate is derived from

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[3] One employee was not challenged when she informed the union observer that she had quit her employment at Charlotte.

their earnings at Charlotte, rather than being based on the hourly rate paid to Rock Hill residents who perform draw-in work. Thus, their rate of pay is based on the Charlotte plant wage structure, rather than that of the Rock Hill plant. Even the manner of payment of these employees differs from that of other employees. The latter are paid by a paymaster, during working hours in the mill. The group here under consideration receive their pay directly from the plant office. They have never taken out group life insurance there.

The Company contends that the two factors warrant these employees being considered as regular Rock Hill employees and, therefore, eligible to vote; namely, that the number of drawn-in hands at Charlotte is being reduced and that because Rock Hill is now producing striped goods, the normal tie-in process cannot be used and it will be necessary to continue draw-in work. The employees here involved include some of the most skilled of the draw-in hands and some with many years of seniority. Contrary to the implications made by the Company[4] they were still employed at Charlotte when sent to Rock Hill, and the arrangements made with the employees at that time were exactly the same as at all times in the past including the temporary payment of mileage and preferential hours of employment.

Although the length of the persent period of employment is problematical, all factors indicate that it is of temporary nature only. Therefore, because of this and other factors discussed above, the employees involved do not have a sufficient community interest with the other employees at the Rock Hill plant for them to have a voice in the selection of a collective bargaining representative for those other employees. Consequently, they were not entitled to cast ballots in the election of May 1.[5]

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[4] The Company implied that these workers had been laid off at Charlotte and stated that they had applied for employment at Rock Hill. On the contrary, they were requested by Rock Hill; the first four in accordance with long-standing arrangements and the others upon recommendation of this group when it was found that additional draw-in hands were required.

[5] The Company contends that the Agreement for Consent Election provided that the eligible voters shall be those included within the unit who appear on the payroll for the specified period and, therefore, that the employees here under discussion should be eligible to vote. However, the Agreement also provides that the election would be held in accordance with the Board's customary practices and procedures. The Board has frequently held that such temporary employees are not eligible to cast ballots in elections for the choice of a collective bargaining representative. *Rock Island Produce Company*, 48 NLRB 930; *Sierra-Pacific Power*, 56 NLRB 458.

The Company urged before the Field Examiner that the union's failure to raise an issue concerning these employees, prior to the election, at the time the list of eligible voters was checked should have a bearing on the decision as to eligibility. The check of the roster prior to the election is merely an administrative procedure that is used to try to eliminate as many problems as possible
81 in advance of the actual election. Failure to raise an issue at such time does not preclude any party from challenging at the polls.

The Company has requested that a hearing be held before a Trial Examiner if the undersigned should conclude that the employees here under discussion should not be eligible to vote. This is, in effect, a request that the provisions of Section 1 of the Agreement for Consent Election should be set aside with respect to the provisions that the determination of the Regional Director shall be final and binding upon any question, including questions as to eligibility of voters. No valid reason appears to have been presented and the request is herewith denied.

The Questioned Ballots

The Field Examiner concluded that the intent of one voter (unknown) was to vote "No". Because of certain markings in the "Yes" box, in addition to the clear-cut "X" in the "No" box, the union challenged the ruling; contending that the ballot should be "Void". Although the intent of the voter may have appeared clear, where there is a marking on both sides of the ballot, the intent of the voter is not definite. If he changed his mind after marking in one of the boxes, he should have returned the ballot and obtained a new one rather than endeavoring to obliterate his first marking. The ballot carries such instructions in clear-cut language. We shall, therefore, apply the more basic principle that a ballot marked in both boxes is "Void".

The second ballot in this category also involves a dual marking. The Field Examiner's ruling that the ballot should be "Void" is hereby sustained.

Disposition of Challenged Ballots

Of the eleven challenged ballots, two have been found to be void; eight of the voters have been ruled to have been ineligible; and one (Jackson) has been ruled to be eligible to have her vote counted. Inasmuch as Jackson's ballot cannot change the results of the election, the undersigned will not direct that her ballot be opened and counted. The revised Tally of Ballots thus becomes:

Valid votes for the Union	197
Valid votes against the Union	194
Unopened challenged ballots	11

The Objections

On May 8, 1946, the union filed with the undersigned a letter, dated May 7, 1946, protesting against certain alleged acts
82 of the Company and requesting that the allegations be investigated and the election set aside if, after resolution of the challenged ballots, the union failed to receive a majority of the valid votes cast. This letter was considered as constituting Objections to Conduct Affecting the Results of the Election. The Objections were timely and a copy was served by the union on the Company.

By their terms, the Objections were applicable only if the union failed to receive a majority of the valid votes cast. That condition was not met and, therefore, the Objections are herewith dismissed.

CONSENT DETERMINATION OF REPRESENTATIVES

Pursuant to the terms and provisions of the Agreement for Consent Election entered into by and between the parties, the undersigned Regional Director of the National Labor Relations Board conducted an election by secret ballot. Objections were filed to Conduct Affecting the Results of the Election and have been duly ruled upon hereinabove.

A majority of the valid votes have been cast for Textile Workers Union of America (CIO). Pursuant to Section 8 of the Agreement for Consent Election the undersigned hereby finds and determines that

TEXTILE WORKERS UNION OF AMERICA (CIO)

is the exclusive representative of all the employees in the unit defined in Section 2 of the Agreement for Consent Election for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Atlanta, Georgia, this 29th day of May, 1946.

PAUL S. SAYLER,
Regional Director, National Labor Relations Board, Tenth Region.

August 28, 1946.

Mr. T. W. Church, Manager,
Highland Park Manufacturing Co.,
200 East 16th St.,
Charlotte, N. C.

Dear Sir:

On June 1st, 1946, the National Labor Relations Board, Tenth Region, handed down its decision, certifying Textile Workers Union of America, CIO, as per the election held May 1st, 1946, at the Highland Park Manufacturing Company Plant No. 2, in Rock Hill, South Carolina, as the collective bargaining agent for all its maintenance and production workers, with certain exceptions.

On July 16th, 1946, our representative, Mr. Julius Fry, wrote you requesting that you meet with our representatives and committee, for the purpose of collective bargaining, to the end that a contract and agreement on working conditions and wages, be worked out and signed by both parties thereto.

Nearly four months have elapsed since the election, and to date, your Company has declined to meet with us for the purpose of complying with the board's certification and our request.

We request to be advised not later than September 3rd, 1946, what the Company intends to do in this matter.

Respectfully yours,

JAMES H. FULLERTON,
TWUA Representative.

JHF:dew
CC: Whiteford Blakeney
Ben Dawkins

R. H. Johnston, President — H. W. Moore, Vice-President
T. W. Church, Jr., Sec. & Treas.

Highland Park Manufacturing Co.
Manufacturers of Cotton and Rayon Goods
Charlotte 1, N. C.

Sept. 3rd, 1946.

Textile Workers Union of America,
Independence Bldg.,
Charlotte, N. C.

Gentlemen:

Attention: Mr. Fullerton

We have received your letter of August 28th.

We still feel that we are entitled to a hearing upon the rulings made by the National Labor Relations Board's Regional Director. It seems to us that this should be agreeable to you and that you should join with us in obtaining such hearing.

Very truly yours,

HIGHLAND PARK MFG. CO.
By T. W. CHURCH, JR.

TWC/BC

GENERAL COUNSEL'S EXHIBIT 10

Sept. 23, 1946.

Mr. T. W. Church, General Manager,
Highland Park Manufacturing Co.,
Charlotte, N. C.

Dear Mr. Church:

This will confirm our telephone conversation of September 12, at which time I stated to you that although the Union was not agreeing with the Company's position, that it was not the certified bargaining agent as a result of the election conducted by the Board, that we had received new designations from all of the employees of the Company, and we would agree that an agent of the National Labor Relations Board or any Certified Public Accountant could make a check of our authorization cards with a Company payroll, if the Company would agree, that if our Union represented an uncontestable majority of the employees that the Company would agree

to recognize the Union as the bargaining agent and enter into
85 a collective bargaining contract in good faith. During this conversation, you informed me that the officials had met and discussed the matter, but were not changing its position, that it claimed it was entitled to a hearing on the results of the election conducted by the Board. You will recall that I further informed you that the Union was, and still is, ready at all times to bargain with you.

As you undoubtedly know, the employees held a meeting on September 15th, at which time they voted to strike on September 16, 1946, because the Company has refused to acknowledge our Union as the bargaining agent, because the Company has refused to abide by the terms of the consent election agreement entered into by the Company and the Union on April 10, 1946, and because the Company has continued to violate the National Labor Relations Act.

Very truly yours,

JF:dew JAMES FULLERTON.

GENERAL COUNSEL'S EXHIBIT 11

June 25, 1946.

Highland Park Manufacturing Co.,
Rock Hill, South Carolina.

Attention: Mr. T. W. Church

Dear Sir:

Since Textile Workers Union of America, CIO, has been certified as the sole and exclusive collective bargaining agent for the employees of your Number 2 plant, in Rock Hill, South Carolina, the Union is herewith submitting its proposal for a collective bargaining contract to cover the rates of pay, wages, hours of employment, and working conditions of the employees. Please advise at what time the writer can meet with representatives of your company to discuss this matter.

Very truly yours,

JULIUS R. FRY,
TWUA Representative.

JRF:DEW
Enclosure

86 GENERAL COUNSEL'S EXHIBIT 12

R. H. Johnston, President H. W. Moore, Vice-President
T. W. Church, Jr., Sec. & Treas.

Highland Park Manufacturing Co.
Manufacturers of Cotton and Rayon Goods
Charlotte 1, N. C.

June 28, 1946.

Textile Workers Union of America,
Independence Building,
Charlotte, N. C.

Attention Mr. Fry

Gentlemen:

We have received your letter of June 25th.

In view of the Exceptions which we have filed to the Report of the National Labor Relations Board's Regional Director relating to the election held at our plant at Rock Hill on May 1st, it is our understanding that this matter is not now at a point where it is necessary for us either to accede or to refuse to accede to your request that we engage in collective bargaining with you for a contract affecting the employees of our Rock Hill Plant.

Very truly yours,

HIGHLAND PARK MFG. COMPANY,
By T. W. CHURCH, JR.,
Secretary and Treasurer.

twc/g

GENERAL COUNSEL'S EXHIBIT 13

(Copy) July 3, 1946.

Highland Park Mfg. Co.,
200 East 16th St.,
Charlotte 1, N. C.

Attention: Mr. T. W. Church, Jr.

Dear Mr. Church:

We are in receipt of a copy of letter to Mr. W. S. Blakeney, dated June 28, 1946, from John P. Chapman, Associate Director of the Field Division of the National Labor Relations Board, denying request for an opportunity to present oral argument in a formal hearing before the Board on the Regional Director's ruling in the representation case, in your No. 2 plant.

87 In view of the letter's content, we are again requesting an early conference with you to negotiate a collective bar-

gaining agreement for the employees of your No. 2 Plant in Rock Hill.

Very truly yours,

JULIUS R. FRY,
TWUA Representative.

GENERAL COUNSEL'S EXHIBIT 14

R. H. Johnston, Pres.
Charlotte, N. C.

H. W. Moore, Vice-Pres.
Charlotte, N. C.

T. W. Church, Jr., Sec. & Treas.
Charlotte, N. C.

Highland Park Manufacturing Company
Manufacturers of Cotton Goods
Rock Hill, S. C.

Mill No. 1, Charlotte, N. C. Mill No. 2, Rock Hill, S. C.
Mill No. 3, Charlotte, N. C.

July 5, 1946.

Textile Workers Union of America,
Independence Building,
Charlotte, North Carolina.

ATTENTION: MR. FRY

Gentlemen:

We have received your letter of July 3rd.

We have requested our attorneys to write to Mr. John P. Chapman, Associate Director of Field Division, National Labor Relations Board, in further reference to his letter which you mention. Our attorneys inform us today that they have written to Mr. Chapman, but that as yet there has hardly been time for him to reply.

What we are trying to do is to get a hearing so that we may have opportunity to present evidence and facts bearing upon the matters which the Board's Regional Director has ruled on.

Very truly yours,

HIGHLAND PARK MANUFACTURING COMPANY,
By T. W. CHURCH, JR.

88 GENERAL COUNSEL'S EXHIBIT 16

July 16, 1946.

Highland Park Mfg. Company
Charlotte, North Carolina
ATTENTION: MR. CHURCH

Dear Mr. Church:

We have today received a copy of a letter to your attorney, Mr. Whiteford Blakeney, from Mr. Oscar Smith, from the National Labor Relations Board, dated July 3, 1946, again denying your request for an oral hearing of the questions you raised relative to the recent election at your number 2 plant in Rock Hill, South Carolina.

In view of the contents of this letter, we again renew our request for a conference with you at an early date to discuss matters pertaining to wages, hours, and conditions of employment for the employees of your Number 2 plant.

Very truly yours,

TEXTILE WORKERS UNION OF AMERICA, CIO,
By JULIUS R. FRY,
TWUA Representative.

JRF:dew

GENERAL COUNSEL'S EXHIBIT 17

R. H. Johnston, President H. W. Moore, Vice-President
T. W. Church, Jr., Sec. & Treas.

Highland Park Manufacturing Co.
Manufacturers of Cotton and Rayon Fabrics
Charlotte 1, N. C.

July 22, 1946

Textile Workers Union of America,
Independence Building,
Charlotte, N. C.

ATTENTION: MR. FRY

Gentlemen:

We have received your letter of July 16th.

We do not consider that the ruling which the National Labor Relations Board's Regional Director has made is in any way fair or just, and it is our intention to continue to press for a hearing on the matter.

Very truly yours,

HIGHLAND PARK MFG. COMPANY,
T. W. CHURCH, JR., *Treasurer.*

twc/g

GENERAL COUNSEL'S EXHIBIT 19

(Sample Union Card)

Sept. 9

No. 258

I Rachel Carter, now employed by

HIGHLAND PARK MFG. CO., CHARLOTTE, N. C.

has voluntarily accepted membership in the TEXTILE WORKERS UNION OF AMERICA (CIO), and designate said union as my bargaining agency in all matters pertaining to wages, hours and other conditions of employment. I faithfully pledge myself to conform with and abide by the Constitution, By-Laws and all rules and regulations of said union and of the Local thereof of which I am a member. I hereby authorize my employer (the above-named company) to deduct from my wages each week my union dues and to pay same to the Financial Secretary of my Local Union; provided, however, that no deduction shall be charged against me for any week in which I do not perform work; provided further, that any terms or conditions agreed upon regarding deduction of dues in contract between the TEXTILE WORKERS UNION OF AMERICA and the above-named company, prior to or subsequent to the signing of this authorization, is hereby agreed to.

Weaving 3rd	Rachael Carter
Department	Signature
Glenn C. Webb	273 Kimbell St.
Witness	Address

Fee Charged_____ Sex____F____ S. S. No. _____

GENERAL COUNSEL'S EXHIBIT 24

June 28, 1946.

Mr. W. S. Blakeney
Guthrie, Pierce & Blakeney
Johnston Building
Charlotte 2, N. C.

Re: Highland Park Mfg. Co.
Case No. 10-R-1803

DEAR MR. BLAKENEY:

This will aeknowledge your letter of June 5th with enclosed Exceptions to Consolidated Report of Regional Director.

Inasmuch as the Agreement for Consent Election of April 10, 1946, under which the election in this matter was conducted, provides that "Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board, provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility
90 of voters, raised by any party hereto relating in any manner to the election" your request to have the ruling of the Regional Director overruled and reversed, and your request for an opportunity to present your argument at a formal hearing, are hereby denied.

Very truly yours,

JOHN P. CHAPMAN,
Associate Director of Field Divison.

CC: Textile Workers Union of America, CIO Independence Building, Charlotte, North Carolina.
Paul L. Styles, Regional Director, 10th Region.

EXCERPTS OF GENERAL COUNSEL'S EXHIBIT 1-B
(COMPLAINT)

I

The respondent Highland Park Manufacturing Company is and has been for many years a corporation organized under and existing by virtue of the laws of the State of North Carolina, with its principal office at Charlotte, North Carolina.

II

At all times material herein, the respondent has maintained a plant and place of business in or near Rock Hill, South Carolina,

herein called the Rock Hill plant, and is now and has been continuously engaged at its Rock Hill plant in the manufacture and sale of broad cloth, shirting and knitted yarn.

III

. The respondent in the course and conduct of its business operations at its Rock Hill plant during the calendar year of 1946 (which year is representative of all times material herein) purchased raw materials consisting principally of cotton valued in excess of $100,000.00, approximately 90% of which was purchased outside the State of South Carolina and shipped in interstate commerce to respondent's said plant at Rock Hill, South Carolina. During the same period, the respondent manufactured and sold textile products valued in excess of $100,000.00, approximately 90% of which was shipped in interstate commerce from its said plant at Rock Hill, South Carolina, to places outside the State of South Carolina.

91 EXCERPTS OF GENERAL COUNSEL'S EXHIBIT 1-K (ANSWER)

1. The allegations of Paragraph I are admitted.
2. The allegations of Paragraph II are admitted.
3. The allegations of Paragraph III are admitted.

GENERAL COUNSEL'S EXHIBIT 21

Rock Hill, S. C.

Mr. R. H. Johnston
Highland Park Manufacturing Co.
Charlotte 1, N. C.

DEAR MR. JOHNSTON:

We, the undersigned, are all employees of the Highland Park Company in Rock Hill. We are members of the Textile Workers Union of America (CIO). We are on strike because the Company will not bargain with the Union.

We hereby state that we wish the Union to represent us in collective bargaining about wages, hours of work, and other conditions of employment, and we urge that the Company recognize its duty to bargain; a legal duty under the laws of our Nation, and a moral duty as expressed by every leading Church denomination in the South.

. . . This is to certify that each of the above persons, known personally to me or identified to me, today personally signed in my

presence; that each read it, or had it read and explained, before signing; and that each affirmed the thoughts contained therein.
Date: March 20, 1947.

JAMES H. COLLINS,
Notary Public for S. C.

My Commission expires at the pleasure of the Governor.

State of S. C.
County of York.

This is to certify that I, James H. Collins, a Notary Public for and in the State of South Carolina, have examined each of the Signers of the attached Affidavits separately, and each, of his own or her own free will and accord did sign each of them in my presence. Some were illiterate and could not write. These were signed by me and each of them made his or her X. These are all designated by my initials JHC to the left and right of the Signature. These
92 Affidavits were made beginning on the 20th day of March 1947, and completed on the 24th day of March 1947.

Given under my Hand and Seal this 24th day of March 1947.

JAMES H. COLLINS,
Notary Public for S. C.

My Commission expires at the pleasure of the Governor.

EXCERPTS FROM RESPONDENT'S EXHIBIT 1

EXCEPTIONS TO CONSOLIDATED REPORT OF REGIONAL DIRECTOR

The Company respectfully submits that there is no genuine question as to whether the seven persons above named were "employees at the Company's Rock Hill plant" and that the Regional Director's ruling or "finding" that these persons were not "employees at the Company's Rock Hill plant" is not a bona fide exercise of discretion. In support of this position, the Company hereby asserts that there is no single fact or circumstance which tends to establish these persons as employees anywhere other than at this Company's Rock Hill plant. The Company further asserts that various "findings" set forth in the Regional Director's Report as basis for his conclusion are not in truth findings of fact, but are mere ex parte declarations, made without inquiry of the Company upon such matters and without opportunity on the part of the Company to furnish the true facts in regard to such matters; that on the morning after the holding of the election, the Board's Field Examiner did ask certain questions of the Company which representatives of

the Company answered, but the Company did not understand that it then had an opportunity, and now alleges that it did not then have an opportunity, to present the facts, circumstances, and evidence establishing that the seven persons named above were "employees of the Company's Rock Hill plant"; that immediately after the holding of the election, the Company, through its attorneys, wrote to the Board's Regional Director requesting in the event the Regional Director should consider excluding the ballots of these seven persons from the election count, "that a formal hearing be held before a Trial Examiner so that complete and detailed evidence may be presented in regard to the matter"; that such hearing has never been held, nor indeed did the Company receive any
93-94 reply to its request for such hearing; that the Company has thus had no opportunity to present the evidence tending to establish that the seven persons named above were employees in the Company's Rock Hill plant; and that the Board's Regional Director has ruled that these persons were not employees at the Company's Rock Hill plant without hearing, and without any representative of the Board hearing, the evidence with respect thereto.

WHEREFORE, the Company prays that the Regional Director's Report, in its ruling that the persons named above were not eligible to vote in the election above referred to, be over-ruled and reversed, and that in any event, the Company be given opportunity at a formal hearing to present facts and evidence establishing that such persons were eligible to vote in such election.

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95 **Appendix to Respondent's Brief**

RESPONDENT'S EXHIBIT 1

United States of America

Before the National Labor Relations Board

Case No. 10-R-1803

In the Matter of HIGHLAND PARK MANUFACTURING COMPANY and TEXTILE WORKERS UNION OF AMERICA, CIO

EXCEPTIONS TO CONSOLIDATED REPORT OF REGIONAL DIRECTOR

Upon the grounds hereinafter set forth, Highland Park Manufacturing Company respectfully excepts to the Consolidated Report which has been rendered herein by the Board's Regional Director.

On May 1, 1946, the Board conducted an election among the production and maintenance employees of the Company at the Company's plant in Rock Hill, South Carolina, for the purpose of determining whether a majority of such employees desired to be represented by the Union above named, Textile Workers Union of America, CIO. In an agreement for the holding of such election by consent, such agreement having been entered into by and between the Company and the Union and approved by the Board's Regional Director, it was provided that "the eligible voters shall be those employees included within the unit, *who appear on* the employer's pay roll for the period indicated below"—the period "indicated below" being April 12, 1946. Likewise, in the Board's official
96 "notice of election" posted in the Company's plant, it was stated that "those eligible to vote are all production and maintenance employees at the Company's Rock Hill, South Carolina, plant *who appear on* the Company's pay roll for the period ending April 12, 1946."

Among those who presented themselves at the voting place on the election day and requested the opportunity of voting were seven persons who are engaged in production work "at the Company's Rock Hill, South Carolina, plant" and who do "appear on the Company's pay roll for the period ending April 12, 1946." The names of these persons are Gertrude Boyd, Myrtie Corley, Phronie Fisher, Mildred Floyd, Virginia Moore, Pauline Rice and Josephine Wilson.

The Union challenged the right of these persons to vote in the election. Thereupon, the Board's Field Examiner who conducted the election placed the unopened ballots of these persons in seven separate sealed envelopes, marking on the outside of each such envelope the name of the person who cast the ballot enclosed within that envelope.

Thereafter, on or about May 14, 1946, the Board's Field Examiner wrote to the Union, forwarding a copy of his letter to the Company, and stating that he had submitted a Report recommending to the Board's Regional Director that "the challenged ballots be determined," from which the Company understood, and still understands, that the Board's Field Examiner was recommending to the Board's Regional Director that these ballots be opened and counted. The Board's Regional Director has now, however, in his "Consolidated Report," ruled that the seven persons named above were not eligible to vote in the election and that their ballots shall not
97 be opened and counted. To this ruling, the Company respectfully objects and excepts.

Apparently the basis of the Regional Director's ruling is that the seven persons in question were not "employees" at the Company's Rock Hill plant, for it is certainly not to be denied that they

do "appear on the Company's pay roll for the period ending April 12, 1946."

The Company respectfully submits that there is no genuine question as to whether the seven persons above named were "employees at the Company's Rock Hill plant" and that the Regional Director's ruling or "finding" that these persons were not "employees at the Company's Rock Hill plant" is not a bona fide exercise of discretion. In support of this position, the Company hereby asserts that there is no single fact or circumstance which tends to establish these persons as employees anywhere other than at this Company's Rock Hill plant. The Company further asserts that various "findings" set forth in the Regional Director's Report as basis for his conclusion are not in truth findings of fact, but are mere ex parte declarations, made without inquiry of the Company upon such matters and without opportunity on the part of the Company to furnish the true facts in regard to such matters; that on the morning after the holding of the election, the Board's Field Examiner did ask certain questions of the Company which representatives of the Company answered, but the Company did not understand that it then had an opportunity, and now alleges that it did not then have an opportunity, to present the facts, circumstances, and evidence establishing that the seven persons named above were "employees of the Company's Rock Hill plant"; that immediately after the holding of the election, the Company, through its attorneys, wrote to the Board's Regional Director requesting in the event the
98 Regional Director should consider excluding the ballots of these seven persons from the election count, "that a formal hearing be held before a Trial Examiner so that complete and detailed evidence may be presented in regard to the matter"; that such hearing has never been held, nor indeed did the Company receive any reply to its request for such hearing; that the Company has thus had no opportunity to present the evidence tending to establish that the seven persons named above were employees in the Company's Rock Hill plant; and that the Board's Regional Director has ruled that these persons were not employees at the Company's Rock Hill plant without hearing, and without any representative of the Board hearing, the evidence with respect thereto.

Specifically, and for example, the Regional Director declares in his Report that whenever the Company's Rock Hill plant needed draw-in hands, it was customary for the management of that plant to ask the management of the Charlotte plant, "for these workers by name." The Company denies that this is a fact and asks the opportunity of proving that it is not a fact.

The Regional Director declares that it is the contention of the Company that "employees have always (in the past) severed their employment relationship with the Charlotte plant when they have

worked at Rock Hill." The Company is making and has made no such contention.

The Regional Director declares that "the same conditions prevailed when the employees involved here were sent to Rock Hill" (as on previous occasions when employees came from Charlotte to Rock Hill). The Company denies that this is a fact and asks opportunity of proving that it is not a fact.

99 The Regional Director declares that "the Company has no comparable arrangements with any other employees" such as it has with the persons above named. The Company denies that this is a fact and asks the opportunity of proving that it is not a fact.

The Regional Director declares that "all factors indicate" that the employment of the persons named above at the Company's Rock Hill plant "is of temporary nature only." The Company denies that this is a fact and asks opportunity of proving that it is not a fact.

The Regional Director entirely fails to take into consideration or to mention in his Report various facts which establish clearly and beyond question that the persons named above were employees of the Company's Rock Hill plant—nor indeed could the Regional Director take such facts into consideration or mention them in his Report, inasmuch as they have never been presented to him or to any representative of the Board, nor, as pointed out above, has there been any opportunity afforded for the presenting of such facts.

WHEREFORE, the Company prays that the Regional Director's Report, in its ruling that the persons named above were not eligible to vote in the election above referred to, be over-ruled and reversed, and that in any event, the Company be given opportunity at a formal hearing to present facts and evidence establishing that such persons were eligible to vote in such election.

GUTHRIE, PIERCE & BLAKENEY,
Attorneys for Highland Park Manufacturing Company.

100 RESPONDENT'S EXHIBIT 2

July 1, 1946.

Mr. John P. Chapman,
Associate Director of Field Division,
National Labor Relations Board,
Washington, D. C.

Dear Sir:

In Re: Highland Park Manufacturing Company and Textile Workers Union of America, CIO, Case No. 10-R-1803

We have received your letter of June 28th.

It is, of course, true, as you point out, that the election in the above-entitled matter was conducted under an agreement which provided that "the determination of the Regional Director" should be final and binding upon any question relating to the election, including questions as to the eligibility of voters.

The Company's position, however, as set forth in its statement of Exceptions, is that there is in this case no genuine "question" as to the eligibility of the seven persons referred to in the Exceptions and no genuine "question" as to how the two ballots referred to in the Exceptions should be counted. It is further the Company's position that the Regional Director's ruling with respect to each of these matters is not a genuine "determination" nor a reasonable exercise of his discretion.

The Company points out in its Exceptions that the Regional Director has made his rulings without hearing the evidence and without knowing the facts which are material and pertinent to
101 these matters upon which he has ruled—and without affording the Company an opportunity to present such evidence and such facts to him.

In your letter you refer to the Company's request for opportunity to present argument. The Company is asking not an opportunity to present argument but an opportunity to present evidence and facts necessary to a bona fide decision upon the matters here involved—and such request the Company hereby respectfully and earnestly renews.

Very truly yours,

GUTHRIE, PIERCE & BLAKENEY,
By: W. S. Blakeney.

WB:D

102 TESTIMONY IN NATIONAL LABOR RELATIONS BOARD PROCEEDING

Case No. 10-C-2066

BOARD'S TRANSCRIPT OF RECORD

JAMES H. COLLINS:

By Mr. BLAKENEY:

Q. Are you connected with the Textile Workers Union of America, CIO?

A. Yes, sir.

Q. What is your connection with them?

A. I am a member of Local 10 of Rock Hill Printing & Finishing Company. Also a member on the auditing committee.

Q. Auditing committee?

A. Of that Union.

Q. How long have you been on that committee?

A. I believe this makes the third year.

Q. Then been on any other committees of the Union?

A. Welfare fund. I am on it, too. I am on it now. Have been for the last several months.

. . . .

A. Well, I have a list of the names of people that was on strike. I believe it was what was known as the commissary list.

103 Q. Who gave you that?

A. Mr. Whelchel and Miss Blane.

Q. And——

A. And that was the names that——

Q. And you were to go around and see everybody on that list?

A. They told me to try to see them if it was possible to do it.

Q. Did they have the addresses on there?

A. Some they did and some they didn't.

Q. Some of them you had to find out where they lived, of course?

A. Of course.

Q. Did you have to go as far as Mount Holly to find many?

A. There was just two over there. There was a lot of them around York County. I drove over 200 miles.

Q. You drove over 200 miles?

A. I drove over 200 miles from Thursday after the Commissary closed till Monday about noon. Mostly in circles. Some places I went as much as three or four times. I wanted the people to be sure they read the thing. If they didn't want to sign, it was perfectly all right. If they did it was up to them entirely.

Q. You wanted to be sure you gave them a chance, though?
104 A. Yes.
Q. Did you work pretty late at night?
A. No. I wasn't much of a night owl.
Q. Did you work any at night?
A. On Sunday I did when I went to Isaac Sims. It was dark enough—the reason it comes to my mind, it was dark enough he had lamp light. That is what he signed by.
Q. How did you decide when to quit? I mean how did you decide when to stop getting signatures?
A. I didn't get all of them. I had several I didn't get to see and on the Monday—on Monday I went back to the Union office and I told Miss Blane I had several that I hadn't seen. And she said, "Well, it seems to me you have done enough work and got enough of them anyway, so let's just let it ride."

NELL MCDONALD:

Q. Now, Mr. James Collins testified in substance that you signed that in his presence after he had read it or after you had read it in his presence; after he had read it to you or after you had read it yourself, in his presence. Is that true, or not?
A. That is not true.
Q. Did you know Mr. James Collins at that time?
A. No, I didn't even know him.
105 Q. Do you know him today?
A. Yes, I know him now.
Q. Can you say definitely whether you ever read any paper in his presence or he ever read any paper to you?
A. No, I never did read any paper in his presence and he never did read any paper to me.
Q. Has he even been to your house?
A. No.
Q. Have you even seen him at what is called the commissary of the Union——
A. I never did go to the commissary.

TRIAL EXAMINER MARX: Why don't you wait until the counsel finishes his question?

By Mr. Blakeney:

Q. I will repeat that. Did you ever see him at what is called the Union commissary?
A. No.
Q. How do you know you didn't?
A. Because I didn't never go to the commissary.
Q. Did Mr. Collins ever see you or speak to you on the street?
A. No.

Q. Or anywhere?
A. No.

106 Q. Will you state to the Examiner what were the circumstances under which you signed and why you signed? What led you to sign?
A. Well, there was one particular man right close to me——
Q. A little louder.
A. There was one particular man that run a job right close to mine, and every few minutes he would come up and call me names and he told me he was going to call me names until I signed.
Q. How long did that go on?
A. Well, I went to work sometime in May, I think, and I signed in August.

TRIAL EXAMINER MARX: What year, please? What year?
THE WITNESS: During 1946.

By Mr. Blakeney:

Q. But how long did this calling you names and this telling you what you just testified to, how long did that go on?
A. Well, just about the whole time that I was working until I signed.
Q. How frequently during the day?
A. Well, I would say at least four or five times during the day; during the eight hours.
Q. Why did you sign?
107 A. To make him hush so I could run my job in peace.
Q. Was there any other reason at all for your signing?
A. No.
Q. In your mind?
A. No.
Q. Is that the only reason you signed?
A. That is the only reason.

ARTHUR THOMAS:

Q. There has been introduced in evidence a list on which appears your name as having signed a Union card on August 3, 1946, witnessed by a Mr. Harry Green. Did you sign any Union card on or about August 3, 1946?
A. No, sir. It was after August.

WALTER SWEATT:

Q. Did you understand, when you signed that, you were signing to join the Union, or to authorize the Union to represent you, or——

A. Whenever I signed the book, I thought it was for to keep from striking. That's what I thought. I didn't know it was to sign no union, nor nothing like that.

Q. You understood that what— do you say that you understood what was being signed was everybody who wanted to sign not to strike?

108 A. That's right; yes, sir.

Q. And that's all you thought you were signing?

A. That's right; yes, sir.

JOHN SHAVER:

Q. Had you joined the Union before the strike began?

A. No, sir.

Q. Did you join the Union after the strike began?

A. Yes, sir.

Q. What was it that caused you to join the Union?

A. Well, they put out so many nails I couldn't get there. Had five flat tires getting to work.

MR. RAINS: I don't think that's material, Mr. Examiner. I move it be stricken.

MR. BLAKENEY: We will see.

TRIAL EXAMINER MARX: It is preliminary. It may be connected. I will let it stand for the time being. You can renew your motion later on.

By Mr. Blakeney:

Q. Did you speak to anybody representing the Union in regard to the nails you are talking about?

A. Well, no, sir, I didn't; not until I signed the Union card so the children could go back to school again. They cut the school bus off.

109 MR. RAINS: I object to that conclusion, Mr. Examiner.

By Mr. Blakeney:

Q. Explain what you mean about the nail business, first.

TRIAL EXAMINER MARX: Excuse me a minute. We will let it stand, subject to connection. Renew your motion at the close of this subject. I yet don't know what counsel is getting at. Now, it may appear.

By Mr. Blakeney:

Q. Explain what you mean by these nails.

A. There were so many of them in the road until I would get so many in my tires until——

Q. In the road whereabouts?

A. Well, it was about a quarter of a mile from my house. Out in the main road.

Q. Were there any nails at your house?

A. Plenty of them in my driveway.

Q. Now, what effect did those nails have on your being able to get out?

A. Well, it just picked—stick my tires full of holes and I couldn't go.

Q. Could any automobile transportation be used into or out of your place?

A. I don't see how there could be, hardly, because they quit coming.

Q. Who is "they"?

110 A. School buses and mail carriers. They all stopped.

Q. Do you know why they quit coming?

A. Yes, sir.

Q. Why?

A. Because them nails was in the road.

TRIAL EXAMINER MARX: Did somebody tell you that? That they quit coming for that reason?

THE WITNESS: The children couldn't go to school.

TRIAL EXAMINER MARX: No. Did somebody tell you that they quit coming for that reason?

THE WITNESS: They didn't tell me that they quit coming for that reason, but a man tears up his tires, he ain't going to come back.

TRIAL EXAMINER MARX: All right. Go ahead.

By Mr. Blakeney:

Q. Had the buses and mail and other automobile transportation come to your place always before the nails were there?

A. Yes, sir.

Q. Did they quit while the nails were there?

A. Yes, sir.

Q. Did they start up again after the nails left?

A. After I joined the Union, the nails quit coming and they come back.

Q. Did you talk to anybody about those nails at the time you joined?

111 A. Yes, sir.

Q. Who?

A. I told Mr. Morgan, "Let's stop the nails." He said "All right." There wouldn't be any more.

Q. Wouldn't be any more if what?

A. Any more nails.

Q. Did he tell you why there wouldn't be any more, or there wouldn't be any more if what? Was there any condition attached?

A. No, sir. I reckon he notified them to stop putting them out. They quit.

TRIAL EXAMINER MARX: We will strike that.

By Mr. Blakeney:

Q. Don't tell what you reckon. What did you say to him about signing the card, if anything, with reference to stopping the nails?

A. I told him, when I signed the card, that I wanted the nails stopped.

Q. What did he say?

A. He said they would stop them.

Q. Did they stop?

A. They did stop.

Q. Now, what, then was the reason you signed the card?

A. So that my children could get back in school and I could get my mail.

Q. Was that the only reason you signed it?

A. Yes, sir.

112 JAMES EDWARD KELLEY:

Q. Do you recall signing a Union card, or card authorizing the Union to represent you?

A. Yes, sir.

Q. Who was present when you signed——

MR. BLAKENEY: Strike that.

By Mr. Blakeney:

Q. There is in evidence, here, a list on which your name appears as having signed such card in the presence of Mr. Charles Morgan. Did you sign that card in the presence of Mr. Charles Morgan?

A. No, sir.

By Mr. Blakeney:

Q. Was Mr. Charles Morgan there when you signed?

A. No, sir.

Q. Was he anywhere around your house?

A. Morgan?

Q. Yes.

A. No, sir; he wasn't out there.

T. W. CHURCH, JR.

By Mr. Blakeney:

Q. Mr. Church, you are connected with the Highland
113 Park Manufacturing Company?
A. Yes, sir.
Q. How long have you been connected with that Company?
A. Since 1931.
Q. What is your capacity with respect to the Rock Hill plant of that Company?
A. Well, I am the active head. More or less the General Manager.
Q. Are you the top official in the Company who is active, in charge of the management of the Rock Hill plant?
A. Yes, sir.
Q. There has been introduced in evidence by the General Counsel a paper writing marked his Exhibit No. 3 entitled "An Agreement For Consent Election." I will ask you to look at it and state whether that is a copy of the paper you signed in behalf of the Highland Park Company?
A. Yes, sir.
Q. Pursuant to that so-called agreement for consent election, was an election held at the Rock Hill plant of the Company.
A. Yes, sir.
Q. On or about when?
A. May 5th, I think.
114 Q. What year?
A. 1946.

MR. BLAKENEY: May it be agreed it was May 1st?

MR. RAINS: Yes.

MR. BLAKENEY: May 1st is the exact date.

TRIAL EXAMINER MARX: Do you wish to correct your testimony?

THE WITNESS: Yes, sir.

TRIAL EXAMINER MARX: That it's May 1, 1946?

THE WITNESS: Yes, sir.

By Mr. Blakeney:

Q. Do you recall—and this is in your evidence but merely to fill in the outline of matters, here—do you recall what the counted ballots were for the Union and against the Union?
A. 197 for the Union; 194 for the Company; and the challenged ballots.
Q. Among the challenged ballots, were there seven of those challenged ballots?

A. Seven ballots of the drawing-in girls that lived in Charlotte.

Q. Now, after the election had been held and the vote was, as you say, did the Company recognize and deal and bargain with the Textile Workers Union of America, CIO?

A. No, sir.

115 Q. Why did the Company not do so?

TRIAL EXAMINER MARX: I think that that's a question for me to determine from the facts, Mr. Blakeney. The way the question is asked.

By Mr. Blakeney:

Q. What position did the Company take or express with respect to its dealing, recognizing and bargaining with the Union?

A. We told the Union and Mr. Joy——

Q. Who is Mr. Joy?

A. He is a Labor Board field man, I presume you would say, who came to see us.

Q. All right.

A. We told them that we would not bargain with the Union until the seven votes were counted of the employees who were on the payroll and were eligible to vote.

TRIAL EXAMINER MARX: Could you help me by fixing the time of these two conversations, if you can? I realize that there is correspondence in evidence which bears on it and, of course, which speaks for itself and which bears certain dates.

MR. BLAKENEY: I will bring it out.

TRIAL EXAMINER MARX: All right, sir.

By Mr. Blakeney:

Q. After the election was held, did you have some several—different conversations with any representative of the Union?

A. Yes, sir.

Q. Who?

116 A. Mr. Fullerton, I believe is the only one.

Q. Was there more than one of such conversations?

A. Yes, there was, I would say three or four telephone calls and probably two or three conferences.

Q. And what did Mr. Fullerton, in behalf of the Union, ask you to do?

A. Well, we had received a contract, a proposed contract from him. He asked us to bargain, discuss the contract.

Q. Did you state to him what the Company's position was with respect to that request?

A. We told him that we would not bargain with him at all until these votes were counted. That we thought the people had a right

to vote. We knew they did, and it was just an arbitrary action saying they couldn't.

Q. You say you did have a conversation with a representative of the Board, Mr. Joy, on the same subject?

A. Yes, sir.

Q. What, if any, position did you express to him on that same matter?

A. We told him exactly the same thing.

Q. Now, at any time, in any conversation with either the—or any other communication, whether in writing or orally, has the Company taken any position other than that, either with Union representatives or Board representatives?

117 A. We told them this: We told both the Union representative and the Board representative that if they would count those votes, that we would abide by the decision and if it was in favor of the Union, we would bargain, and we were led to believe that they would be counted.

Q. Well, what do you mean by "led to believe they would be counted"?

A. Well, the day after the election, the night of the election, I should say, Mr. Joy asked several of us to meet in our office the next morning to discuss these challenged votes. We went down there and had a short talk with him.

Q. What did he tell you was the purpose of him asking you to meet?

A. Well, he wanted to ask some questions about these girls. The votes that he had——

Q. What girls?

A. The drawing-in girls, seven of which he had challenged, and he had the votes—ballots in a sealed envelope.

Q. Seven of which had been challenged?

A. Yes, sir.

Q. All right. Now, what was said and done on the occasion of that meeting?

A. Well, he asked a good many questions about the girls and we answered them the best that we could, and we left with the understanding that we would be allowed to present evidence and facts to the Labor Board in regard to them and that when it was decided that the votes would be opened, that they would

118 be opened in Atlanta in front of a representative of the CIO and a representative of the Company.

Q. On that occasion, did you request opportunity to present the facts and the evidence, or not?

A. Yes, sir.

Q. How?

A. Yes, sir.

Q. Did you understand that you were then and there being given such opportunity?

A. Well, I understood we would be given opportunity.

TRIAL EXAMINER MARX: Mr. Blakeney, his understanding, I will tell you right now, may not be of very much assistance unless he relates exactly what Mr. Joy, to the best of his recollection, told him bearing on the subject, because his understanding may very well be a conclusion and would not be helpful.

By Mr. Blakeney:

Q. State to the best of your recollection what was said in regard to your request to have opportunity to present the facts and the evidence in regard to the eligibility of these seven people.

A. Well, I can't remember the exact words, but I asked that we be given the opportunity to present the complete facts and the complete picture to either the Board or whoever it was necessary. I can't remember Mr. Joy's words, but I think he said that we would be given that opportunity.

119 Q. Now, irrespective of what you think, will you state what was the substance of what he communicated to you on whether you would or wouldn't have an opportunity.

A. Well, he said we would have, or words to that effect.

Q. Would have what?

A. Opportunity to present the facts.

Q. All right. Now, did you, on that occasion, at that meeting, present the facts or not?

A. No, sir. We didn't go into any detail at that time.

Q. Has the Company ever been given an opportunity to give facts and evidence in regard to the—in regard to whether or not the seven persons you refer to were or were not employees of the Rock Hill plant?

A. No, sir.

By Mr. Blakeney:

Q. Now, along about the time of the strike did the Union or the Board, or any representative of the Board, suggest to you or any other representative of the Company, that the Union be recognized and bargained with upon the basis of a check of alleged new or recent Union cards signed up?

A. I don't remember just the date, but Mr. Fullerton asked that we do that.

Q. Mr. Fullerton asked that you do that?

A. Yes, sir.

120 Q. Did you agree to do so?

A. No, sir.

Q. What did you state was your position with respect to that?

A. We told him that we would rely on the election and——

Q. What did you state was your position or reason for not agreeing to the card check proposition?

A. Well, we wouldn't know the authenticity of the cards.

Q. Of the cards.

A. They weren't going to bring the cards and show them to us. They proposed we have an arbitrator or auditor, I believe, to check the cards against the payroll.

Q. What, if anything, would you be able to know as to whether the signatures were genuine?

A. We wouldn't know.

Q. What, if anything, would you be able to know with respect to whether the cards, if signed genuinely, were signed of the signator's own free will?

A. We wouldn't know. That's what we would question.

Q. That's what?

A. That's what we would question.

Q. Did you question it?

A. Yes, sir.

121 Q. To whom?

A. Mr. Fullerton.

Q. Did you have any reason to suppose that the cards might not be signed of free will?

A. We had had employees to tell us that.

Q. Later on, was there a petition presented to the Company with a large number of names on it and purporting to have been notarized?

A. Yes, sir.

Q. What position did you take with respect to that petition?

A. We didn't recognize that.

Q. Well, but what? What did you——

A. We didn't recognize that because we didn't know whether those people had signed that or whether they had been forced (P. 319) to sign it, coerced——

TRIAL EXAMINER MARX: Excuse me. Is this the position Mr. Church, or other representatives of the Company, took in their own office, or is it the position they expressed to somebody?

MR. BLAKENEY: He has testified to everything up to now he told Mr. Fullerton, and I am going to ask, on the petition, whether he told Mr. Fullerton.

TRIAL EXAMINER MARX: All right, sir. I am addressing myself to the last question.

A. I did tell Mr. Fullerton.

By Mr. Blakeney:

Q. You told him what?

A. We questioned the signatures and questioned whether
122 they were signed with their own free will and accord.

Q. Did you make any inquiry or investigation as to the person who purported to act as notary on it?

A. Yes, sir. We asked about Mr. Collins. We found out that he was a Union fellow.

Q. What do you mean, "A Union fellow"?

A. Belonged to the Union over to the bleachery.

Q. Yes.

A. And that put more doubt in our mind. Whether they would get a notary public with that connection.

By Mr. Blakeney:

Q. Now, Mr. Church, about when was the last time the Union ever asked the Company to recognize them; deal with them?

A. I would say about a month before the strike was over.

Q. Has the Union ever asked you to recognize them or deal with them since?

A. No, sir.

Q. From that time on, did you ever hear anything more about the matter, one way or the other, until this case was brought?

A. I haven't heard a word about it. I thought it was dead.

Q. Mr. Church, the employees whom you have referred to as drawing-in hands, the seven employees, I will ask you if
123 their names were as follows: Gertrude Boyd, Myrtie Corley, Phronie Fisher, Mildred Floyd, Virginia Moore, Pauline Rice, and Josephine Wilson?

A. Yes, sir.

Q. Were those persons on the payroll of the Rock Hill plant on April 12, 1946?

A. Yes, sir.

Q. Were they employees of the Rock Hill plant?

A. Yes, sir.

By Mr. Rains:

Q. Mr. Church, you said the night of the election Mr. Joy called a meeting for the next morning?

A. He just asked that we meet the next morning. He wanted to ask us some questions about these girls.

Q. Yes, of course, all the parties knew that some ballots had been challenged in the election?

A. Yes, sir.

Q. Did you meet at the Rock Hill plant?
A. In the Rock Hill plant; yes, sir.
Q. In the office of the plant?
A. Yes, sir.
Q. And I believe you stated that he asked a great many questions.
124 A. He asked to see the payrolls, and where these girls lived and questions of a similar nature; yes, sir.
Q. But do you recall saying that he asked a great many questions?
A. Well, I don't know how many, but—Yes; I would say he asked quite a few questions.
Q. But you say you didn't go into any detail at that time?
A. No, sir. It was our understanding that we would later have a chance to put the facts before the Board in Atlanta. That he was up there to run the election.
Q. And how long did the meeting last?
A. Well, I couldn't answer that.
Q. Could you estimate?
A. Possibly an hour.

TRIAL EXAMINER MARX: Pardon me. Was this after the election?
THE WITNESS: Yes. It was the next morning.
TRIAL EXAMINER MARX: The election had already been held?
THE WITNESS: Yes, sir.
TRIAL EXAMINER MARX: And at that time you knew that there were these seven challenged ballots, in any event.
THE WITNESS: Yes, sir.
TRIAL EXAMINER MARX: Is that so?
THE WITNESS: Yes, sir.
125 TRIAL EXAMINER MARX: Go ahead. I merely wanted to establish the time.

By Mr. Rains:

Q. Now, was Mr. Blakeney present at that meeting?
A. Yes, sir. We called him down to listen in. He wasn't there the night before.
Q. No, but he was there the morning in the meeting, following the election, with Mr. Joy?
A. Yes, sir.
Q. And I believe the Union was represented in the meeting too, were they not?
A. Yes, sir.
Q. I think the majority of the representatives were Company people, weren't they?
A. I wouldn't say that. I don't remember how many of the Union people were there. We had our superintendent and myself and Mr. Blakeney.

Q. And who else for the Company; do you recall?

A. The general superintendent from Charlotte. Yes. He was there.

Q. Did you have your Company observers in the election? Were they in the meeting?

A. I don't remember. They may have been. I don't know.

Q. You don't remember? I understood you to say that you think that Joy said you would be given an opportunity to present the complete facts.

126 A. He either said that or something to that effect. We were led to believe that.

Q. And you say you have never been given an opportunity to present the facts since that time?

A. No, sir.

Q. Do you have any recollection or knowledge of the request of the Respondent to the Regional Director on May 8th stating that if the challenges should be resolved against the Company, then they wanted a formal hearing before a Trial Examiner on the Matter?

A. That we asked that?

Q. Yes. The Respondent.

A. Yes, sir.

Q. Then you recall the certification came out on May 29th, 1946?

A. I remember it coming out.

Q. That was some 28 days later; from May 2nd.

A. Yes, sir.

Q. Did you, at any time, from May 2nd until May 29th, seek to send to the Regional Director any of this evidence you claimed bore on the status of the challenged persons?

A. I don't remember that we did. We didn't hear anything from them. It was our understanding that we would have an opportunity to do this.

Q. Were you waiting to see whether the challenges would be resolved against the Respondent before you put on the evidence with respect to the challenged persons?

127 A. I don't know about that.

Q. Mr. Church, then, as nearly as you can recall, what did Mr. Joy say when he opened the meeting or first commented at the meeting on May 2, 1946?

A. I couldn't answer that. It would be a guess.

Q. Well, tell me again, what did you understand was the purpose of that meeting.

A. I understand the purpose of the meeting was for him to get some information in regard to these challenged ballots.

TRIAL EXAMINER MARX: Did you give him the information?

THE WITNESS: We gave him anything he asked for; yes sir.

TRIAL EXAMINER MARX: No. Did you give him all information in your possession about those challenged ballots?

THE WITNESS: I wouldn't say we gave him all in our possession. We gave him everything he asked for.

TRIAL EXAMINER MARX: Can you tell me now what you gave him?

THE WITNESS: No, sir; I cannot. Sorry. I remember he wanted to check the payrolls. He did that. That's one thing I definitely remember.

TRIAL EXAMINER MARX: But did you tell him what your position was on the challenged ballots?

128 THE WITNESS: We told him that those girls were supposed to vote, because the day before the election him and the Union Committee was in the office, met with us, they went carefully over the payroll and passed on everybody on the payroll, that they could vote, the payroll of April 12th. That is what was asked for in the consent election.

TRIAL EXAMINER MARX: You gave him that information?

THE WITNESS: Yes, sir.

TRIAL EXAMINER MARX: And is that the information you had in mind presenting, as you say, in Atlanta?

THE WITNESS: Well, Mr. Blakeney wasn't down there during the election, and when these votes was challenged, nobody knew they would be challenged because they were employees of the Company. Now, when Mr. Joy asked for this meeting the next day, we merely asked Mr. Blakeney to come down to listen to what was going to happen so he could help us get together the facts and present them to the Board later. I don't remember Mr. Blakeney taking very much part in it, as a matter of fact. He was more or less listening so he could help us later. We weren't trying to present all the facts. Up to that time, up to that time they had been challenged it had been our position—rather, there was no question in our mind but what everybody on the payroll of April 12th should vote with the exception of the overseers.

TRIAL EXAMINER MARX: And my understanding is that you explained that position to Mr. Joy?

129 THE WITNESS: Yes, sir.

TRIAL EXAMINER MARX: If you know, was that before he looked at the payroll?

THE WITNESS: Let me explain this first. Mr. Joy saw the payroll the day before the election, and so did the Union Committee and these Charlotte girls were on the payroll. They were looked for by the Committee, found, and I assumed they passed them, because it was our understanding when they went out everybody on that payroll would be allowed to vote unless challenged there.

By Mr. Blakeney:

Q. Did the questions put to you by the Board representative cover the whole situation with respect to these girls or not?
A. No, sir.
Q. Did you ask for an opportunity to present the whole situation with respect to these girls being or not being employees?
A. I did.

MILDRED FLOYD:

By Mr. Blakeney:

Q. Your name is Mildred Floyd?
A. That is right.
Q. Where do you work?
A. Highland Park, No. 2, Rock Hill.
130 Q. Rock Hill?
A. Yes.
Q. What is your job?
A. Drawing-in hand.
Q. How did you come to be a drawing-in hand at the Rock Hill plant for the Highland Park Company?
A. I asked for a job there. Had my sister ask for a job.

By Mr. Blakeney:

Q. This occasion when you say you asked for a job at the Rock Hill plant, was that prior to April 12, 1946? Was that before April 12, 19—
A. Yes.
Q. Upon your applying for—or asking for a job, I believe is the way you put it, at the Rock Hill plant, did you get a job down there?
A. Yes.

By Mr. Blakeney:

Q. What is the first day you worked at the Rock Hill plant, if you remember?

TRIAL EXAMINER MARX: Now, Mr. Blakeney, I am going to ask you for the purpose of offering this testimony. What is the object of that question?

MR. BLAKENEY: To prove that she was on the payroll of this plant prior to April 12, 1946, the date fixed in the consent election agreement as the date for determination of who should be entitled to vote.

131 TRIAL EXAMINER MARX: Would the purpose of that testimony be to present facts enabling the Board to determine

whether in fact she was entitled to vote, contrary to the ruling of the Regional Director?

MR. BLAKENEY: Yes, sir, I think that would necessarily follow. The Regional Director ruled she wasn't entitled to vote, and I want to present evidence to the effect that she was all that the consent agreement called for in defining who could vote; namely, that she was an employee of the Rock Hill plant on April 12, 1946, that being the definition in the consent election agreement as to who should vote.

TRIAL EXAMINER MARX: Yes, of course, I understand. Then the question arises whether or not I can go behind the Regional Director's determination that she wasn't entitled to vote. That is behind his investigation and his conclusion.

MR. BLAKENEY: Well, sir, as to that, we say two things: We say, first, that the facts with respect to whether or not these persons were employees on April 12th were never presented by the Company to any representative of the Board; that the Company all along in the early stages of the matter thought it was going to have opportunity to present such facts and never got that opportunity; that Mr. Joy, representative of the Board, did on one occasion come and ask some questions of the Company, but that the Company did not at that time understand that he was making any thorough canvass or investigation of the situation; that the Company genuinely was under the impression that further inquiry, canvassing, and thorough investigation was going to be made, and that upon that
132 being made the Company was going to have opportunity to present the full facts.

. . . .

MR. BLAKENEY: That that opportunity never came, and that the Regional Director went on and issued his report and finding without the facts from the Company's standpoint ever having been presented to him.

. . . .

MR. BLAKENEY: Yes, sir. The Company definitely contends that it was arbitrary on the part of the Regional Director. On the Regional Director's part, it was arbitrary to make a finding on this subject without the Company being given the opportunity which it thought it was going to be given to present all the facts on the issues. Now, that the finding and the ruling were further arbitrary in that they are in flagrant disregard of the facts in regard to the matter.

Now, whether because they didn't get the facts, I don't know, but at any rate, in flagrant disregard of the truth and the facts. In other words, that the Regional Director's office made a finding and ruling that these people were not employees, when the truth and the

fact is that if they were human beings, they were employees and nothing else but employees of this plant; and for the Regional Director to say they were not is simply for the Regional Director to say black is white. For the Regional Director to say they were not employees on the payroll of this Company April 12, 1946, is equivalent to the Regional Director saying a weaver in that plant is not a weaver, or a weaver in that plant, I will declare
133 ineligible to vote. That it was an arbitrary act in that respect to say that these people were not entitled to vote, because it involves saying they were not employees on April 12th, which was a finding totally in disregard of the truth, and on which —to get back to the original point—on which we were not given the opportunity to present the truth.

. . . . . .

MR. BLAKENEY: In view of the Examiner's last ruling, the Respondent makes the following offer of proof; namely, that if E. D. Newton, Arthur Jerrett, Fred McNinch, T. W. Church, Jr., Gertrude Boyd, Virginia Moore, Pauline Rice, Josephine Wilson, Phronie Fisher, Myrtie Corley, Louise Bailes, Mildred Floyd, Gretchen Fisher, and Alec McFadden were permitted to testify, and the Respondent offers said witnesses as being present and ready to testify as follows:

That they would testify that during the early part to the middle of March, 1946, the Rock Hill plant of the Respondent was commencing a change-over in the nature of its product from plain goods to fancy and striped goods; that such change-over in the nature of the plant's product called for and required the use of additional drawing-in hands; that drawing-in hands were scarce and difficult to find at that time; that the Rock Hill plant had been inquiring for some weeks prior to the period above mentioned of all persons who sought employment with it as to whether they were drawing-in hands or could do drawing-in work; that the Rock Hill plant had made diligent inquiry in various directions in an effort to obtain drawing-in hands; that the Company had not been able
134 to obtain any additional drawing-in hands in the immediate vicinity of Rock Hill;

That shortly prior to the middle of March, 1946, the Company's Charlotte plant had installed and was putting into operation certain new machinery known as Barber-Coleman Automatic drawing-in machines; that the Company's Charlotte plant at the time referred to was and for many years had been a fancy goods or striped goods plant, and by reason of that being the nature of the Charlotte plant's product, had for years employed a number of drawing-in hands, such number being in the neighborhood of 75 such hands; that as the result of the installation and commencement of the

operation of the machines above referred to, the need in the Charlotte plant for drawing-in hands was declining and that a large proportion of said drawing-in hands were not working full time at about the middle of March, 1946;

That Mr. Newton, the superintendent of the Rock Hill plant, at various times had consulted and talked with the superintendent of the Charlotte plant in regard to getting from some source drawing-in hands for the Rock Hill plant in view of changing over of the nature of the product at the Rock Hill plant; that the superintendent of the Charlotte plant informed Mr. Newton, superintendent of the Rock Hill plant, as to the situation in the Charlotte plant in respect to the installation and beginning operations of the aforesaid machines;

And that the superintendent of the Rock Hill plant then and thereupon, about the middle of March, 1946, communicated with four of the persons named above, namely, Gertrude Boyd,
135 Virginia Moore, Pauline Rice and Josephine Wilson, and inquired of them as to whether they would be willing to come to work at the Company's Rock Hill plant as drawing-in hands at the Rock Hill plant, and that all of the four stated that they desired to do so; that thereupon said four employees quit their employment at the Company's Charlotte plant and hired as employees to the Company's Rock Hill plant; the first day of their working at the Company's Rock Hill plant being March 25, 1946; that shortly thereafter others of the above named individuals, namely, Phronie Fisher, Myrtie Corley, Louise Bailes, and Mildred Floyd notified the superintenedent of the Rock Hill plant that they, too, would like to become hired as drawing-in hands at the Company's Rock Hill plant; that they stated that the reason they desired to do so was that they had been told by Gertrude Boyd, Virginia Moore, Pauline Rice and Josephine Wilson what the drawing-in work was at the Rock Hill plant, the earnings to be had, and the prospects for continued employment in the drawing-in work; that they knew that the drawing-in work in the Charlotte plant was diminishing and curtailing.

MR. BLAKENEY: (Continuing) That upon the above-named Phronie Fisher, Myrtie Corley, Louise Bayles and Mildred Floyd notifying the Superintendent of the Rock Hill plant that they desired to become drawing-in hands at the Rock Hill plant, they were hired in such capacity.

That they quit their job at the Charlotte plant and became hired as employees at the Company's Rock Hill plant. That the
136 first days that they worked at the Company's Rock Hill plant were respectively as follows:

Myrtie Corley, April 1, 1946;
Mildred Floyd, April 1, 1946;

Louise Bayles, April 6, 1946;
Phronie Fisher, April 8, 1946;

That thereafter two additional persons who were working as drawing-in hands at the Company's Charlotte plant; namely, Gretchen Fisher and Ellie McFadden; likewise, and in similar manner made application to the Superintendent of the Company's Rock Hill plant and were similarly hired in at the Rock Hill plant and similarly quit their employment at the Company's Charlotte plant.

That the first days on which the two last named individuals worked at the Rock Hill plant were May 6, 1946 in each instance.

That upon thus quitting their employment in the Charlotte plant, and becoming hired as employees at the Rock Hill plant, the above-named individuals severed all connection of every nature with the Charlotte plant and retained no connection of any nature therewith.

That more particularly they were all taken off the payroll of the Charlotte plant. That employment severance cards were made out for all of them and filed in the Company's Charlotte plant.

That their Employee Insurance which they had been carrying at the Company's Charlotte plant was terminated and cancelled and that on all reports and records kept by the Company's
137 Charlotte plant with respect to such employees; namely, Federal Social Security cards, and reports, and North Carolina State Unemployment Compensation cards and reports, their names were dropped as of the dates they quit their work in the Charlotte plant.

That all of the named women, upon being employed as above stated at the Rock Hill plant, were put on the payroll of the Rock Hill plant and became listed as employees of the Rock Hill plant on all the Rock Hill plant's Social Security cards and reports and State Unemployment Compensation cards and reports.

That they were offered the right to take Employee Insurance at the Rock Hill plant and accepted such insurance and applied therefor but were required to wait 60 days before obtaining such insurance and that such 60-day wait was uniformly required of all persons who made application for employment and became hired as employees at the Rock Hill plant.

That the Rock Hill plant, from the date of the said individuals commencing work in the Rock Hill plant, began to report them on all its employee reports to State and Federal Government.

That they, from such dates, began to be figured in on the Rock Hill plant's Workmen Compensation Insurance premium.

That they, from the date of their commencing work at the Rock Hill plant, began to be paid by check drawn on a Rock Hill bank, as are all other employees of the Company's Rock Hill plant.

TRIAL EXAMINER MARX: Would they testify to that? Those people? That last item?

138 MR. BLAKENEY: That they were paid by check.

TRIAL EXAMINER MARX: I mean, that that is the custom of all the employees in the Rock Hill plant.

MR. BLAKENEY: Mr. Newton, the Superintendent, would testify that all employees are paid by check on the same Rock Hill bank.

TRIAL EXAMINER MARX: To that effect. Thank you.

MR. BLAKENEY: Yes, sir. That the only difference in any respects between these individuals, after they commenced to work at the Rock Hill plant, the only differences between them with respect to having status of employees at Rock Hill and other persons working at the Rock Hill plant are that they came from longer distance to work than most of the Rock Hill employees but that many other of the Rock Hill plant employees did come for distances of considerable size to their work and some of the other employees as far as these.

That although these individuals continued to live in Charlotte, North Carolina, that they did not live in any property or houses belonging to the Company's Charlotte plant but in houses and homes of their own.

That they were unable to find residence or living accommodations in Rock Hill.

That a factual difference between the pay of the individuals named and other drawing-in hands at the Company's Rock Hill plant is that these individuals draw more pay than the other drawing-in hands at the Rock Hill plant. That there are only—

that there were, at the times referred to above, and still are,

139 only two to four other drawing-in hands, in addition to the individuals named.

That the individuals named also are paid at their regular rate of pay for the time elapsing while they are enroute to and from Charlotte.

That one of the individuals named; namely, Mrs. Virginia Moore; furnishes an automobile in which some of the individuals named ride to and from Charlotte regularly and that the Company reimburses Mrs. Moore for her mileage upon the use of her car at the rate of six cents per mile.

That the greater pay above referred to received by the persons named and paid by the Company to them was the only basis upon which the Company was able to hire such persons to work in its Rock Hill plant, they being unwilling to work in the Rock Hill plant upon any lower terms and the Company being unable to obtain any other drawing-in hands to do equivalent work on any terms better to the Company.

That the persons named, being experienced and skilled in drawing-in work on fancy and striped goods, are the only drawing-in

hands in the Company's Rock Hill plant who are so skilled and experienced and the only drawing-in hands who can handle such work, and that they are essential and indispensable employees to the Rock Hill plant in that sense and for that reason.

That the individuals named from the dates above referred to on which they commenced work at the Company's Rock
140 Hill plant have at all times and ever since worked as such employees at the Company's Rock Hill plant regularly and without interruption except for such as may have been occasioned briefly by illness, or the like; except that one of the above-named, Mrs. Myrtie Corley quit the Company's employment on August 2, 1946, and has never worked for the Company since, and Mrs. Louise Bayles quit the Company's employment on September 15, 1946, and has never worked for the Company since.

TRIAL EXAMINER MARX: It might have been shorter to have the witnesses testify.

MR. BLAKENEY: I am about through now. I think it would have taken all eight of them a little longer than this.

That the aforenamed Myrtie Corley, upon quitting her work at the Rock Hill plant, immediately re-applied for employment as a drawing-in hand at the Charlotte plant and was refused employment there for the reason that drawing-in hands were—no additional drawing-in hands were needed at that plant.

That likewise Mrs. Louise Bayles, after quitting her employment at the Rock Hill plant, applied for employment as a drawing-in hand at the Charlotte plant and was refused such employment for the same reason.

That the persons named in all respects share in the activities, social and otherwise, with the other employees of the Rock Hill plant. That they contribute to various mutual and common employee funds, along with other Rock Hill employees.

That other Rock Hill employees, on occasion, engage in social activities with the individuals named in the homes of the
141 said individuals in Charlotte, and that the circumstances with respect to such mutual interests, as between the individuals named and the other Rock Hill employees are no different from similar relationships between Rock Hill employees not involving——

TRIAL EXAMINER MARX: Who would testify to that last, Mr. Blakeney?

MR. BLAKENEY: All these girls.

TRIAL EXAMINER MARX: Would they know about the relationships of all other employees of the Rock Hill plant? Would they be able to testify to that?

MR. BLAKENEY: They would say this: That we engage with the Rock Hill employees in the activities that the other employees engage in here.

TRIAL EXAMINER MARX: Yes. That was the preceding statement you made. It's merely your offer of proof. I wanted to be sure I understood you correctly. Go ahead, sir.

MR. BLAKENEY: That the persons named have participated in all wage increases that other Rock Hill employees have participated in since the date that they commenced to work at Rock Hill.

That all letters and communications and notices which have gone from the Company to any other employees of the Rock Hill plant; general notices, communications; have likewise gone to these individuals. That one such example was a letter written by the Company prior to the election referred to in this proceeding held
142 on May 1, 1946, in which the Company among other things, urged all employees to vote in said election. That the individuals named received such letters, along with all other employees of the Rock Hill plant.

I believe that's about all of that, Mr. Examiner. Let me ask——

TRIAL EXAMINER MARX: Yes, sir, I can't conceive that you have left anything out.

MR. BLAKENEY: I am not—well, I may have.

That all of the individuals named except Myrtie Corley and Louise Bayles are still and today working as employees, drawing-in hands, at the Company's Rock Hill plant.

That's all.

. . .

143 Caption omitted

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 6082

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HIGHLAND PARK MANUFACTURING COMPANY, RESPONDENT

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Filed March 14, 1950

To the Honorable, the Judges of the United States Court of Appeals for the Fourth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp.

II, Secs. 151, *et seq.*), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Highland Park Manufacturing Company, Rock Hill, South Carolina, and its officers, agents, successors, and assigns. The proceedings resulting in said order are known upon the records of the Board as "In the Matter of Highland Park Manufacturing Company and Textile Workers Union of America, CIO," Cases Nos. 10-R-1803 and 10-C-2066.

In support of this petition the Board respectfully shows:

(1) Respondent is a North Carolina corporation, engaged in business in the State of South Carolina, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

144 (2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on June 29, 1949, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, and its officers, agents, successors, and assigns. On July 6, 1949, the Board issued an order correcting its Decision and Order. The aforesaid order, as corrected, provides as follows:

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Highland Park Manufacturing Company, Rock Hill, South Carolina, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of all production and maintenance employees, at the Respondent's Rock Hill, South Carolina, plant, excluding clerical employees, superintendents, overseers, second hands, and all supervisors as defined in the amended Act;

(b) Interfering in any other manner with the efforts of Textile Workers Union of America, CIO, to bargain collectively on behalf of employees in the aforesaid bargaining unit.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Textile Workers Union of America, CIO, as the exclusive bargaining repre-

sentative of all production and maintenance employees at the Respondent's Rock Hill, South Carolina, plant, excluding clerical employees, superintendents, overseers, second hands, and all supervisors as defined in the amended Act, with respect to rates of pay, wages, hours of employment, or other terms or conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant in Rock Hill, South Carolina, copies of the notice attached hereto, marked Appendix A.[10]

145 Copies of such notice, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed by the Respondent or its representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth Region in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

(3) The Board's Decision and Order, also order correcting Decision and Order were served upon Respondent on June 29 and July 6, 1949, respectively, by sending copies thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said

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[10] In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

order of the Board, and requiring Respondent, and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD,
By (S) A. Norman Somers,
A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C. this 13th day of March 1950.

APPENDIX A

Notice to All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We will bargain collectively upon request with Textile Workers Union of America, CIO, as the exclusive representative of all employees in the bargaining unit described herein, with respect to wages, rates of pay, hours of employment, or other terms or conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

146

All production and maintenance employees at the Rock Hill, South Carolina, plant, exclusive of clerical employees, superintendents, overseers, second hands, and all supervisors as defined in the amended Act.

We will not in any manner interfere with the efforts of Textile Workers Union of America, CIO, to bargain collectively with us as the exclusive representative of the employees in the appropriate unit described above.

HIGHLAND PARK MANUFACTURING COMPANY,
(Employer)

By ——— ———
(Representative) (Title)

Dated ———.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

DISTRICT OF COLUMBIA, ss:

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this

verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

(S) A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn to before me this 13th day of March 1950.

[SEAL] (S) ROSE MARY FILIPOWICZ,
Notary Public, District of Columbia.

My Commission expires March 15, 1953.

March 14, 1950, notification to respondent, together with copy of the petition, is mailed to Highland Park Manufacturing Company, Rock Hill, South Carolina.

March 16, 1950, the appearance of David P. Findling, Associate General Counsel, A. Norman Somers, Assistant General Counsel, and Frederick U. Reel, Attorney, is entered for the petitioner.

147 March 30, 1950, the appearance of Whiteford S. Blakeney is entered for the respondent.

April 27, 1950, the appendix of petitioner is filed.

May 25, 1950, motion of petitioner for leave to file brief in excess of 50 printed pages is filed.

ORDER PERMITTING PETITIONER TO FILE BRIEF IN EXCESS OF 50 PRINTED PAGES

Filed May 27, 1950

[Style of court and title omitted.]

Upon the motion of the Petitioner by its counsel, and for good cause shown, special permission is hereby granted Petitioner in the above-entitled case to file brief in excess of 50 printed pages, but not exceeding 53 printed pages.

May 26, 1950.

JOHN J. PARKER,
Chief Judge, Fourth Circuit.

May 29, 1950, brief on behalf of the petitioner is filed.

June 9, 1950, brief and appendix on behalf of the respondent are filed.

ARGUMENT OF CAUSE

June 13, 1950 (June term, 1950) cause came on to be heard before Parker, Soper, and Dobie, Circuit Judges, and was argued by counsel and submitted.

United States Court of Appeals for the Fourth Circuit

No. 6082

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

HIGHLAND PARK MANUFACTURING COMPANY, RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

(Argued June 13, 1950. Decided September 2, 1950)

OPINION

Filed September 2, 1950

Before PARKER, SOPER, and DOBIE, Circuit Judges.

Frederick U. Reel, Attorney, National Labor Relations Board (David P. Findling, Associate General Counsel; A. Norman
148 Somers, Assistant General Counsel; Marcel Mallet-Prevost and Samuel M. Singer, Attorneys, National Labor Relations Board, on brief), for Petitioner, and Whiteford S. Blakeney (Pierce and Blakeney on brief) for Respondent.

PARKER, Circuit Judge:

This is a petition to enforce an order of the National Labor Relations Board which directed the Highland Park Manufacturing Co. at its Rock Hill, S. C., plant to bargain with the Textile Workers Union of America, affiliated with the C. I. O., as the bargaining agent of its employees. Question is raised as to whether the union obtained a majority vote in the election held to determine the bargaining representative, but we need not go into this, as we think that the Board proceeded upon an erroneous theory of law in ordering the company to bargain with the T. W. U. A. upon its petition, when that union at the time was affiliated with the C. I. O., whose officers had not then complied with the statute requiring the filing of noncommunist affidavits. The Board applied the rule which it had laid down, contrary to the opinion of general counsel and with one member dissenting, in *Matter of Northern Virginia Broadcasters*, 75 N. L. R. B. 11.

The question presented here is identical with that before the Court of Appeals of the Fifth Circuit in *N. L. R. B.* v. *Postex Cotton Mills*, 5 Cir. 181 F. 2d 919, which involved the application of the same rule; and we agree with the decision of that court reversing the action of the Board for the reasons set forth in the comprehensive and able opinion of Judge Russell.

We find no ambiguity in the language of the governing statute. On the contrary it provides as clearly as language can that the power of the Board may not be invoked by a labor organization unless there is on file the affidavits which the statute requires executed "by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit."* The C.I.O. is unquestionably a national labor organization and the T. W. U. A. is admittedly affiliated with it. The argument of the Board that filing is required only of the officers of an organization of which the
149 bargaining union is a constituent and subordinate unit is negatived by the language which requires filing by the officers of the international organization of which the bargaining union is "an affiliate" as well as where it is a "constituent unit."

As there is no ambiguity in the language of the statute, there is no occasion to resort to the rules of construction; but, if resort be had to these, the result is the same. The reason and purpose of the provision was to eliminate Communists and other seeking the overthrow of the Government by force from positions in which they would be able to use the power of labor organization, which the statute was fostering, in the aid of political strikes and other

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* The statute is as follows: "No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under subsection (e) (1) of this section shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of sections 286, 287, 1001, 1022, and 1023 of Title 18 shall be applicable in respect to such affidavits." Sec. 9 (h), Labor Management Relations Act, 61 Stat. 146, 29 USCA sec. 159 (h).

dangerous disruptions of industry. As to this, Chief Justice Vinson in the recent case of *C. I. O.* v. *Douds*, 339 U. S. 382, 70 S. Ct. 674, said:

"The constitutional justification for the National Labor Relations Act was the power of Congress to protect interstate commerce by removing obstructions to the free flow of commerce. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937). That Act was designed to remove obstructions caused by strikes and other forms of industrial unrest, which Congress found were attributable to the inequality of bargaining power between unorganized employees and their employers. It did so by strengthening employee groups, by restraining certain employer practices, and by encouraging the processes of collective bargaining.

"When the Labor-Management Relations Act was passed twelve years later, it was the view of Congress that additional impediments to the free flow of commerce made amendment of the original Act desirable. * * *

"One such obstruction, which it was the purpose of sec. 9 (h) of the Act to remove was the so-called 'political strike.' Substantial amounts of evidence were presented to various committees of Congress, including the committees immediately concerned with labor legislation, that Communist leaders of labor unions had in the past and would continue in the future to subordinate legitimate trade union objectives to obstructive strikes when dictated by Party leaders, often in support of the policies of a foreign government. And other evidence supports the view that some union leaders who hold to a belief in violent overthrow of the Government for reasons other than loyalty to the Communist Party likewise regard strikes and other forms of direct action designed to serve ultimate revolutionary goals as the primary objectives of labor unions which they control. * * *

"It is sufficient to say that Congress had a great mass of material before it which tended to show that Communists and others proscribed by the statute had infiltrated union organizations not
150 to support and further trade union objectives, including the advocacy of change by democratic methods, but to make them a device by which commerce and industry might be disrupted when the dictates of political policy required such action."

Mr. Justice Jackson, in his concurring opinion in the Douds case, had this to say, as to the reason and purpose of the statutory provision:

"The Communist Party * * * is not primarily interested in labor's vote, for it does not expect to win by votes. It strives for control of labor's coercive power—the strike, the sit-down, the

slow-down, sabotage, or other means of producing industrial paralysis. Congress had legalized the strike as labor's weapon for improving its own lot. But where Communists have labor control, the strike can be and sometimes is perverted to a party weapon. In 1940 and 1941, undisclosed Communists used their labor offices to sabotage this Nation's effort to rebuild its own defenses.

"This labor leverage, however, usually can be obtained only by concealing the Communist tie from the union membership. Whatever grievances American workmen may have with American employers, they are too intelligent and informed to seek a remedy through a Communist Party which defends Soviet conscription of labor, forced labor camps and the police state. Hence the resort to concealment, and hence the resentment of laws to compel disclosure of Communist Party ties. The membership is not likely to entrust its bargaining power, its records, and its treasury to such hands. When it does, the union finds itself a more or less helpless captive of the Communist Party. Its officers cease to be interested in correcting grievances but seek to worsen and exploit them; they care less for winning strikes than that they be long, bitter and disruptive. They always follow the Communist Party line, without even knowing its source or its objectives. The most promising course of the Communist Party has been the undercover capture of the coercive power of strategic labor unions as a leverage to magnify its power over the American people."

In the light of this purpose, it is perfectly clear that it is much more important to exclude communists and others plotting the overthrow of the government by force from holding office in the great national labor organizations, such as, the C. I. O. and the A. F. L. than to exclude them from office holding in their affiliates; and it is not reasonable to suppose that Congress did not intend the officers of the former to be covered by its provisions. It is true that it is the officers of the affiliates who call the strikes; but it is the officers of the national or parent organizations who shape labor policies that cause the strikes to be called, and this is particularly true of general strikes or strikes having a political pur-
151 pose. As was well said by Member Gray in his dissenting opinion in *Northern Virginia Broadcasters, supra:*

"The officers of the A. F. L. and the C. I. O. have been recognized as the spokesman and representatives of organized labor in this country. It was the A. F. L. Executive Council which recommended on December 15, 1941, that 'no-strike policy shall be applied in all war and defense * * * industries.' On the following day, the conference of A. F. L. presidents adopted this recommendation.

"The extent of the influence wielded by the A. F. L. is also apparent from the control which it exercises over the 'jurisdiction'

of its member unions. Awards of the governing body may be subject to enforcement through expulsion from the organization. Conversely, the member unions exercise a measure of control over their parent organization through the election of its officers.

"It is therefore apparent that the A. F. L. may exercise direct and influential control over its constituent unions in important respects and that A. F. L. officers occupy a strategic position to affect the economic life of the Nation. Under these circumstances, it is inconceivable that Congress was not concerned with the Communist affiliation of the officers of the A. F. L. and C. I. O. in accomplishing its intended purpose of purging labor of Communist influence."

We have carefully considered the argument to the contrary in the majority opinion in *West Texas Utilities Co.* v. *N. L. R. B.*, D. C. App.— — F. 2d —; but we are not impressed by it. We agree with the statement of Judge Russell in the Postex case, *supra*, that the Congressional purpose was to "wholly eradicate and bar from leadership in the American labor movement, at each and every level, adherents to the communist party and believers in the constitutional overthrow of our government." If the Statute is construed in accordance with its express language to deny governmental support to unions that are affiliated with national organizations which refuse to comply with its anti-communist provisions, the result will be either that the national organizations will comply with the statute, or that they will be segregated from the effective body of loyal American labor by the withdrawal of their affiliates. In either event, the labor movement will be effectively projected from the danger of Communist leadership in the formulation of labor policies; and this is evidently the end to which the legislation was directed. We see no occasion to emasculate the statute by restorting to forced rules of interpretation when its language is perfectly clear and gives unqualified support to the purpose which Congress had in mind. The office of interpretation is to resolve ambiguities, not to create them.

152 Nothing contrary to our decision here was decided in *N. L. R. B.* v. *Harris-Woodson Co.*, 179 F. 2d 720, since in that case the question now before us was not raised. It was assumed in that case on all sides that the filing by the officers of the T. W. U. A. was a sufficient compliance with the statute and the only question was whether the bargaining union could avail itself of the change of affiliation which had taken place.

For the reasons stated, enforcement of the Board's order will be denied and the order will be set aside.

Enforcement denied.

In the United States Court of Appeals for the Fourth Circuit

No. 6082

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

HIGHLAND PARK MANUFACTURING COMPANY, RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

DECREE

Filed and Entered September 2, 1950

This cause came on to be heard upon the petition of the National Labor Relations Board for enforcement of a certain order issued by it on the 29th day of June, 1949, as corrected by order issued on the 6th day of July, 1949, in a proceeding before said Board numbered 10-C-2066, entitled "In the Matter of Highland Park Manufacturing Company and Textile Workers Union of America, CIO"; upon the transcript of record in said proceeding certified and filed in this court; and the said cause was argued by counsel.

On consideration whereof, it is ordered, adjudged, and decreed by the United States Court of Appeals for the Fourth Circuit, that the enforcement of said order of the National Labor Relations Board be, and the same is hereby, denied, and that said order be, and the same is hereby, set aside.

JOHN J. PARKER,
Chief Judge, Fourth Circuit.
MORRIS A. SOPER,
U. S. Circuit Judge.
ARMISTEAD M. DOBIE,
U. S. Circuit Judge.

On another day, to wit, October 3, 1950, a certified copy of the decree of this Court is transmitted to the National Labor Relations Board.

153 In the Supreme Court of the United States

[Title omitted]

STIPULATION

Subject to this Court's approval, it is hereby stipulated and agreed, by and between counsel for the respective parties hereto,

that for the purpose of the petition for writ of certiorari the printed record may consist of the following:

1. Appendix to brief of petitioner.
2. Appendix to brief of respondent.
3. The proceedings had before the United States Court of Appeals for the Fourth Circuit.

It is further stipulated and agreed that petitioner will cause the Clerk of the United States Court of Appeals for the Fourth Circuit to file with the Clerk of the Supreme Court of the United States a complete certified record on appeal in the United States Court of Appeals for the Fourth Circuit; and that, in the event the petition for writ of certiorari is granted, the printed record shall consist of the proceedings in the court below and such portions of the complete record on appeal in that Court as the parties may designate.

It is further stipulated and agreed that either of the parties hereto may refer in his brief to the record filed in the Supreme Court of the United States.

PHILIP B. PERLMAN,
Solicitor General,
Counsel for Petitioner.
W. S. BLAKENEY,
Counsel for Respondent.

Dated: November 10, 1950.

Clerk's Certificate to foregoing transcript omitted in printing.

154 SUPREME COURT OF THE UNITED STATES

No. 425, October Term, 1950

ORDER ALLOWING CERTIORARI—Filed February 26, 1951.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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No. 425

In the Supreme Court of the United States

OCTOBER TERM, 1950

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HIGHLAND PARK MANUFACTURING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 425

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HIGHLAND PARK MANUFACTURING COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit entered on September 2, 1950 (R. 147-152), setting aside an order issued by the Board against the Highland Park Manufacturing Company (R. 1-7).

OPINIONS BELOW

The opinion of the Court of Appeals (R. 147-152) is reported at 184 F. 2d 98. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 1-35) are reported at 84 NLRB 744.

JURISDICTION

The judgment of the Court of Appeals was entered on September 2, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Sections 9 (f), (g), and (h) of the National Labor Relations Act, as amended, provide that the Board shall not issue a complaint upon a charge filed by a labor organization unless that labor organization "and any national or international labor organization of which it is an affiliate or constituent unit" have filed the reports and affidavits prescribed in those Sections.

The question presented is whether the Board properly issued a complaint upon a charge filed by an international union affiliated with the Congress of Industrial Organizations at a time when the officers of the international had filed the reports and affidavits prescribed by Sections 9 (f), (g) and (h) of the National Labor Relations Act, as amended, but the officers of the C. I. O. had not.

STATUTES INVOLVED

The statutory provisions principally involved are Sections 9 (f), (g), and (h) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, Secs. 151, *et seq.*). The per-

tinent provisions are set out in the Appendix, *infra*, pp. 10-13.

STATEMENT

From June to September, 1946, the Textile Workers Union of America, an affiliate of the Congress of Industrial Organizations, repeatedly asked respondent to recognize and bargain with it as representative of a majority of the employees in an appropriate unit in respondent's plant in Rock Hill, South Carolina (R. 14, 21-22, 38-41, 47, 55, 72, 83-88). As a consequence of respondent's continued refusal to bargain, the Textile Workers, on September 13, 1946, filed an unfair labor practice charge with the Board (R. 8).

The Board issued its complaint on January 10, 1949, and the customary proceedings were thereafter held before a Trial Examiner and before the Board (R. 1, 8, 9).

In the proceedings before the Trial Examiner and before the Board, respondent, in addition to contending that the Textile Workers did not represent a majority of the employees, urged that the complaint should be dismissed because the Congress of Industrial Organizations, with which the Textile Workers was affiliated, had not complied with the filing requirements of Sections 9 (f), (g), and (h) of the amended Act, which was enacted in June 1947, after the filing of the Textile Workers' charge but before the issuance of the complaint (R. 2, n. 3, 10). The Trial Examiner and the Board rejected this contention, the Board citing

Northern Virginia Broadcasters, 75 NLRB 11, in which it had stated its reasons for concluding that parent federations such as the American Federation of Labor and the Congress of Industrial Organizations were normally not included in the phrase "national or international labor organization" as used in Sections 9 (f), (g), and (h).[1] The Board likewise rejected respondent's contentions that on the merits it had not violated the Act (R. 2-5). Accordingly, on June 29, 1949, the Board issued its order requiring respondent to cease and desist from the unfair labor practices found and to bargain with the Textile Workers upon the latter's request (R. 5-6).

The Court of Appeals, without discussing the merits of the refusal to bargain, set aside the Board's order on the ground that "the Board proceeded upon an erroneous theory of law" in issuing its complaint upon a charge filed by the Textile Workers "when that union at the time was affiliated with the C. I. O., whose officers had not then complied with the statute requiring the filing of noncommunist affidavits" (R. 148). The court

[1] The Board in *American Optical Co.*, 81 NLRB 453, distinguished the situation which exists where a charge is filed by a local, national, or international labor organization which is affiliated with a parent federation from the situation which exists where the charge is filed by an "organizing committee" or "federal labor union" which is under the direct control of a parent federation. In the latter situation, the Board pointed out, the parent federation itself acts as a "national or international labor organization." See also National Labor Relations Board, *Thirteenth Annual Report*, Government Printing Office, 1949, p. 24.

noted that its decision was in accord with that of the Fifth Circuit in *National Labor Relations Board* v. *Postex Cotton Mills*, 181 F. 2d 919, and in conflict with that of the District of Columbia Circuit in *West Texas Utilities Company* v. *National Labor Relations Board*, 184 F. 2d 233.

REASONS FOR GRANTING THE WRIT

1. In holding that it is a condition to the issuance of a complaint upon charges filed by a national or international labor organization that the parent federation also file the non-communist affidavits prescribed in Section 9 (h), the court below acknowledged that its views were in conflict with those expressed by the Court of Appeals for the District of Columbia Circuit in *West Texas Utilities Company* v. *National Labor Relations Board*, 184 F. 2d 233. In the *West Texas* case, the court expressly approved the Board's holding that parent federations under such circumstances are not included within the phrase "national or international labor organization" as used in Section 9 (h),[2] and that consequently officers of the AFL are not required to file the affidavits prescribed therein.[3]

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[2] The same phrase is used in Sections 9 (f) and (g), companion subsections to 9 (h). All three subsections are involved in the instant case, although only Section 9 (h) is discussed in the opinion of the court below.

[3] In the *West Texas* case, the officers of the parent federation had filed the affidavits prescribed by Section 9 (h) by the time the Board issued its complaint, although they had not

In enforcing the Board's order in the *West Texas* case, the court noted that under the decisions of this Court "great weight" should be accorded the interpretation of the administrative agency. The court also observed that the Board's interpretation apparently had been approved by the Congressional committee created to report upon the functioning of the Act. Relying upon this Court's ruling that the purpose of Section 9 (h) was to prevent communist-led unions from obstructing collective bargaining by calling politically motivated strikes (*American Communications Assn.* v. *Douds*, 339 U. S. 382), the court, in the *West Texas* case, held the parent federations to be outside the scope of that Section because they, unlike local, national, and international unions, do not engage in collective bargaining or call strikes. The court further supported its conclusion by reference to leading labor economists who have recognized the distinction between national and international unions and "parent federations," and by an examination of the legislative history of Section 9 (h), which establishes that both the Congress and the President understood the Section to apply to nationals and internationals but not to parent federations. The court, in the *West Texas* case, thus expressly approved the Board's decision in

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done so at the time of the refusal to bargain, the unfair labor practice in that case. Both the Board and the court in the *West Texas* case rested their decisions on the ground that Section 9 (h) did not apply to parent federations.

Northern Virginia Broadcasters, 75 NLRB 11, and noted its disagreement with *National Labor Relations Board* v. *Postex Cotton Mills*, 181 F. 2d 919 (C. A. 5).

The court below, however, upon its assumption that the CIO is "unquestionably" a national labor organization (R. 148), approved and followed the *Postex* decision and expressly rejected "the argument to the contrary" in the *West Texas* decision (R. 151), as well as the Board's ruling in *Northern Virginia Broadcasters*.

2. The decision below raises a question of major importance in the administration of the Act. Although the two parent federations have now filed the documents prescribed in Sections 9 (f), (g), and (h),[4] there is no assurance that they will continue to file the annual reports and affidavits required therein. Under the decision below, any such cessation of compliance would automatically suspend the Board's power to issue complaints, investigate questions of representation, or entertain petitions for a union-shop election where the charge or petition was filed by a local or international labor organization affiliated with that parent federation. This consideration led the court in the *West Texas*

[4] The AFL filed the prescribed documents on November 7, 1947, and the CIO on December 22, 1949. Compliance with Sections 9 (f), (g), and (h) was presumably effected by the parent federations to obtain the privilege of invoking the facilities of the Board in those cases in which they perform the functions of a national or international labor organization. See *American Optical Company*, 81 NLRB 453.

case to refer to "the calamitous effect on the entire economy of non-compliance by a single federation officer" should the statute be construed to require such compliance (184 F. 2d at 238). Furthermore, under such circumstances, the decision below would thwart the entire congressional purpose of spotlighting Communists in the labor movement, for no incentive to compliance by officers of internationals, nationals, and locals would remain if non-compliance by a single federation officer deprived all its affiliates of recourse to the Board.

The decision below also casts serious doubt on the validity of the Board's order in fourteen cases now pending before the courts of appeals, in which the Board's complaint issued at a time when the parent federation of which the charging union was an affiliate had not complied with the filing requirements of Sections 9 (f), (g), and (h). Twenty similar cases have been referred to the General Counsel of the Board with instructions to seek enforcement of the Board's order therein, although petitions to enforce these orders have not yet been filed. The validity of these orders is, of course, similarly jeopardized by the decision below

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

GEORGE J. BOTT,
General Counsel,
National Labor Relations Board.

DECEMBER 1950.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, 151, *et seq.*), are as follows:

* * * * *

SEC. 9. * * *

* * * * *

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded

$5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of

any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

"(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees,

raised by a labor organization under subsection (e) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits."

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NATIONAL LABOR RELATIONS BOARD, PETITIONER

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HIGHLAND PARK MANUFACTURING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 425

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HIGHLAND PARK MANUFACTURING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINION BELOW

The opinion of the court below (R. 120–124) is reported at 184 F. 2d 98. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 1–34) hereinafter referred to as the "Board" are reported at 84 N. L. R. B. 744.

JURISDICTION

The decision of the Court of Appeals was issued on September 2, 1950. The petition for writ of certiorari was filed on December 1, 1950, and granted on February 26, 1951. The jurisdiction of this

Court rests on Section 10 (e) of the National Labor Relations Act as amended, hereinafter referred to as the "Act."

QUESTIONS PRESENTED

1. Whether an employer has a justiciable right, in an enforcement proceeding against it, to a determination by the court as to whether the charging union has complied with Section 9 (h) of the Act.

2. Whether Section 9 (h) requires filing of non-Communist affidavits by officers of a National federation with which a charging international union is affiliated, as a prerequisite to the issuance of a Board complaint, even though the officers of the charging union have filed such affidavits.

STATUTE INVOLVED

Principally involved is Section 9 (h) of the Act, the pertinent part of which reads as follows:

> * * * no complaint shall be issued pursuant to a charge made by a labor organization * * * unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party [and does not have the proscribed associations or beliefs].

The full text of Section 9 (h) as well as other relevant provisions of the Act (61 Stat. 136, 29 U. S. C., Supp. III, 141 et seq.) is set out in Appendix I, *infra* pp. 140–150.

STATEMENT

A. THE UNFAIR LABOR PRACTICE

The proceedings culminating in this litigation were commenced on March 28, 1946. On that date Textile Workers Union of America, hereinafter called the Union, filed a petition for investigation and certification of representatives under Section 9 (c) of the Act, claiming exclusive bargaining rights for certain employees in one of respondent's plants (R. 68). On April 10, 1946, respondent and the Union agreed to the conduct of a consent election by the Regional Director of the National Labor Relations Board to determine whether the Union represented a majority of the employees in the stipulated appropriate unit (R. 11; 69).[1]

The election was held on May 1, 1946. Four hundred and two ballots were cast, of which 197 were for the Union, 194 were against the Union, and the remaining 11 were challenged by the Union (R. 11; 72–75). On May 29, 1946, the Regional Director upheld the Union's challenges and rejected the 11 ballots.

On or about June 5, 1946, respondent filed exceptions to the Regional Director's ruling on the

[1] References preceding the semicolon are to the Board's findings; those following are to the supporting evidence.

challenges and requested the Board to overrule the Regional Director or to give it the opportunity to present further evidence (R. 2; 87–88). On June 28, the Board denied respondent's requests on the ground that both the agreement for the consent election, signed by respondent, and the Board's Rules and Regulations, pursuant to which the agreement was drawn, expressly accorded finality to the Regional Director's rulings on challenged ballots (R. 13; 85).[2]

On June 25, after its victory in the election, the Union requested a bargaining conference with respondent (R. 13; 80). On June 28, respondent replied that it was unnecessary to refuse or accede to the Union's request because of respondent's then pending exceptions to the Regional Director's report (R. 13; 81). Following the Board's ruling on the exceptions, respondent refused numerous further requests for bargaining made by the Union, on the ground that it intended to continue to press its objections to the Regional Director's ruling (R. 13; 37, 53, 68, 79).

The Union thereupon attempted to overcome respondent's reservations concerning its majority status by offering additional proof. During the summer of 1946 it offered to demonstrate its

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[2] See Rules and Regulations of the National Labor Relations Board, Series 3, Article III, Section 12 (8 Fed. Reg. 16047, 16054) in effect at the time of the execution of the agreement.

majority status by a crosscheck of Union cards against respondent's payroll. Respondent flatly rejected this offer (R. 20–21; 36).

Still endeavoring to convince respondent of its majority status, the Union secured the signatures of a majority of the employees in the unit to new designation cards (R. 21; 36–37, 84) and, starting on September 10, made three offers to respondent's officers to check these new cards against respondent's payroll (R. 21–22; 37–39, 79). These requests, too, were refused (*ibid.*).

On September 13, 1946, almost a year before the Taft-Hartley amendments, the Union filed with the Board a charge that respondent had violated Section 8 (5) of the National Labor Relations Act, by refusing to bargain collectively with it. It was upon this charge that the Board's complaint in this proceeding was ultimately issued.

B. THE TAFT-HARTLEY AMENDMENTS AND PROCEDURE ADOPTED BY THE BOARD THEREUNDER

The Taft-Hartley amendments were passed on June 23, 1947, and became effective on August 22, 1947. Sections 9 (f), (g) and (h), which were newly added by the amendments (Appendix I, pp. 142–145, *infra*), directed the Board and the General Counsel not to take action on any union petition for a collective bargaining election, not to entertain any petition for a union shop authorization election, and not to issue any complaint alleging

the commission of an unfair labor practice unless the petitioning or charging union, and any national or international labor organization with which it was affiliated, filed certain financial and other information with the Secretary of Labor and kept it annually up-to-date, and unless the officers of those unions filed non-Communist affidavits with the Board.

At the time Sections 9 (f), (g) and (h) went into effect there were 1840 representation cases pending before the Board and 1481 unfair labor practice cases, including the instant one, in which charges had been filed but complaints had not yet issued. The Board and the General Counsel were of the opinion that Sections 9 (f), (g) and (h) applied to these pending cases[3] and that, consequently, compliance by the petitioning and charging organizations was necessary before further administrative proceedings could be undertaken.[4] To prevent a complete breakdown

[3] *Rite-Form Corset Co., Inc.*, 75 N. L. R. B. 174; *Myrtle Desk Co.*, 75 N. L. R. B. 226; *Colonial Radio Corp.*, 75 N. L. R. B. 228; National Labor Relations Board, 13th Annual Report, 1948, p. 22; compare *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U. S. 498.

[4] The Board was also required to determine what effect, if any, was to be given to Sections 9 (f), (g) and (h) in cases where complaints had already issued on charges filed by labor organizations and the cases were pending either before the Board or the courts. The Board concluded that to effectuate the policy of Congress it would, in its administrative discretion, make its orders to bargain conditional upon compliance by the charging union with Sections 9 (f), (g) and

in the administration of the statute, the Board and the General Counsel were thus required to make an immediate administrative determination regarding basic minimum requirements under Sections 9 (f) and (h); to establish administrative machinery to facilitate compliance by labor organizations which desired to meet the standards which Congress had laid down; and, as speedily as possible, to determine for each such labor organization whether compliance had in fact been achieved.[5]

On August 19, 1947, the Board promulgated rules and regulations[6] governing compliance with Sections 9 (f), (g) and (h), and established an Affidavit Compliance Branch charged with the function of accepting and inspecting information and affidavits, and making compliance determinations pursuant to the rules and regulations and the administrative rulings of the Board and the

(h) (*Marshall & Bruce Co.*, 75 N. L. R. B. 90), and that it would recommend to the Courts of Appeals that decrees entered after the effective date of the Act, enforcing Board bargaining orders, be similarly conditioned (*National Labor Relations Board* v. *Brozen*, 166 F. 2d 812 (C. A. 2); *United Steelworkers of America* v. *National Labor Relations Board*, 170 F. 2d 247 (C. A. 7), affirmed, 339 U. S. 382).

[5] Substantially all of the first Board and court determinations under the new Act involved issues arising out of Sections 9 (f) and (h). National Labor Relations Board, *Thirteenth Annual Report* (Gov't Print. Off., 1948), pp. 21–25, 48–49.

[6] N. L. R. B. Rules and Regulations, Series 5, Section 102.13; 12 Fed. Reg. 5656.

General Counsel. Similar functions, including inspection and investigation of information supplied, were to be performed in the Board's Regional Offices.

Since it was impossible for many labor organizations to comply with Sections 9 (f), (g) and (h), before the effective date of the Act, the Board and the General Counsel decided to grant a twenty-day period of grace before dismissing petitions and charges on grounds of noncompliance.[7] This period was subsequently extended to October 31, 1947, for all unions which requested such extension.[8] Regional Directors were empowered to grant further extensions, upon request, to unions which, before October 31, had taken affirmative steps to come into compliance.[9]

In addition to other matters requiring interpretation, the Board and the General Counsel were required to determine generally the identity of persons subject to the affidavit requirements of Section 9 (h), and the evidence upon which the agency could rely as showing that the labor

[7] Daily Labor Report, August 20, 1947, No. 163, p. A–1, A–2; teletype August 20, 1947, from General Counsel to all directors of N. L. R. B. regions and sub-regions.

[8] Daily Labor Report, September 19, 1947, No. 184, p. A–1, teletype September 9, 1947, from General Counsel to Directors of N. L. R. B. regions and sub-regions.

[9] Teletype October 29, 1947, from General Counsel to all Directors of N. L. R. B. regions and sub-regions: See Daily Labor Report, October 30, 1947, No. 213, p. A–10 for illustrations of the exercise of this authority.

organizations had furnished to the Secretary of Labor and disseminated among their membership the information contemplated by Sections 9 (f) and (g). As to information which the statute contemplated that labor organizations would file with the Secretary of Labor, the Board and the General Counsel determined to accept as proof of compliance appropriate certificates which the Secretary of Labor would issue to the organizations. Proof of distribution of such material to the union's members, however, was required to be made to the Board.[10] Because of administrative difficulties which the Board and the General Counsel envisioned would result from any other interpretation, they construed the term "officer" in Section 9 (h) as applying only to persons denominated "officers" in the constitutions or bylaws of labor organizations.[11]

After the Board and the General Counsel had made these and similar preliminary determinations, the Affidavit Compliance Branch, to facili-

[10] N. L. R. B. Rules and Regulations, Series 5, Section 102.13, 12 Fed. Reg. 5656.

[11] Daily Labor Report, August 19, 1947, No. 162, p. A-1; Letter G. C. (Field) No. 2, August 19, 1947, p. 2. The Board and the General Counsel subsequently changed this interpretation and promulgated a definition of the word "officer" designed to prevent unions from evading the provisions of Section 9 (h) by not designating as officers in their constitutions and bylaws persons performing the functions ordinarily performed by officers, National Labor Relations Board Rules and Regulations, Series 6, Section 102.13, 16 Fed. Reg. 1934, 1938; National Labor Relations Board, *Fifteenth Annual Report* (Gov't Print. Off., 1951), pp. 20–22.

tate compliance, printed and distributed to unions a booklet called "A Guide For Labor Organizations," which describes the procedures and forms established by the Board and the Department of Labor for complying with the filing requirements. Proper forms were made available at regional offices, and in the main the mechanics of locals' compliance were handled with the appropriate regional office. Forms published by the Board for this purpose include (1) the non-Communist affidavit,[12] (2) a certificate of distribution of financial data,[13] (3) a certificate of union officers,[14] and (4) a certificate of intent to remain in compliance.[15] The Department of Labor published a form for furnishing the required financial information.[16] When this latter form is accepted by the Secretary of Labor, a letter certifying that fact is sent to the Union, which in turn sends a copy to the Affidavit Compliance Branch of the Board.[17]

When the material required by Sections 9 (f), (g) and (h) is initially filed with the regional director, a careful examination of the forms and their contents is made by the regional office. An

[12] Form N. L. R. B.–1081, in "A Guide for Labor Organizations," at p. 18.

[13] Form N. L. R. B.–1085, in *Id.*, at p. 15.

[14] Form N. L. R. B.–1080, in *Id.*, at p. 17 (now superseded by Form N. L. R. B. 3054).

[15] N. L. R. B. Pattern No. 37, in *Id.*, at p. 16.

[16] Form No. 44–R700, in *Id.*, at pp. 12–13.

[17] In *Id.*, at p. 14.

investigation may be made if the regional director is not satisfied with the certificate of distribution of financial data. In the case of non-Communist affidavits, an administrative investigation is made to determine whether all officers listed in the union's constitution and by-laws have filed affidavits.[18] Incorrectly prepared reports or affidavits are rejected and follow-ups on them are required. When all the documents are finally ready for filing they are sent to the Affidavit Compliance Branch in Washington, D. C., and the regional office retains the information on separate records.

Virtually at the outset a major problem of statutory policy arose. On August 19, 1947, the former General Counsel announced that, in his opinion, unless officers of the C. I. O. and A. F. L. filed non-Communist affidavits, international unions and locals affiliated with or forming constituent units of such international unions, which were affiliated with either of these federations, would not be able to invoke the processes of the Board.[19] Under this ruling, although the officers of local and international unions that had filed charges or petitions complied with Sections 9 (f), (g) and (h), the petitions and charges could not be processed unless and until the federations with which they were affiliated also complied.

[18] See amendments to Section 101.3 and 102.13 of Rules and Regulations, effective January 1, 1950, 29 CFR, Cum. Pocket Supp., p. 11, and note 11, p. 9, *supra*.

[19] Daily Labor Report, No. 162, August 19, 1947, p. A-1.

Subsequent to the former General Counsel's announcement, the A. F. L. Executive Council issued a statement that its officers would refuse to sign the affidavits.[20] The officers of the C. I. O. also refused to file. Thus, under this interpretation, no further proceedings could be taken in substantially all of the more than 1,800 representation cases and 1,400 unfair labor practice cases in which complaints had not yet been issued.[21] All future petitions or charges filed by labor organizations affiliated with one of the major federations would suffer the same fate. Under the former General Counsel's ruling, compliance by local and national and international unions with Sections 9 (f), (g) and (h) would be fruitless to avail those unions of the benefits of the Act, so long as the officers of the federation with which they were affiliated refused to comply.[22]

On August 28, 1947, the Board's Regional Director for the Fifth Region (Baltimore, Maryland), following the policy of the former General Counsel, dismissed a petition for certification which had been filed prior to the effective date of the Act by a local union affiliated with

[20] Daily Labor Report, No. 179, September 12, 1947, p. A–1.

[21] During the fiscal year July 1, 1946, to June 30, 1947, 84.3% of all representation petitions and 84.7% of all unfair labor practice charges filed with the Board were filed by unions affiliated with the A. F. L. or C. I. O. National Labor Relations Board, 12th Annual Report, 1947, Appendix A, p. 67.

[22] For example, John L. Lewis, then an officer of the A. F. L., publicly announced that he would refuse to sign the affi-

the International Brotherhood of Electrical Workers, on the ground that although officers of the Local and of the International had filed affidavits, the officers of the A. F. L., with which the International was affiliated, had not. The Union appealed administratively to the Board from this dismissal of its petition,[23] and the Board, after carefully considering the language, legislative history and objectives of Section 9 (h), concluded on October 7, 1947, that the former General Counsel's interpretation was erroneous. *Northern Virginia Broadcasters, Inc.*, 75 N. L. R. B. 11.[24]

The Board found that the words "*national or international* labor organization," in "ordinary labor relations parlance * * * have a definite, and almost technical, meaning," which does not include "parent federations such as the A. F. L. or the C. I. O. within its meaning." 75 N. L. R. B., at 13–14. The Board therefore concluded that "Congress could not have deliberately intended" by its use of this phrase in Sections 9 (f), (g) and (h), "to include the two great national federations within

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davit. This made it futile for all local and national unions affiliated with the A. F. L. to comply. Daily Labor Report, September 19, 1947, No. 184, p. A–1.

[23] The appeal was taken pursuant to N. L. R. B. Rules and Regulations, Series 5, Section 102.63; 12 Fed. Reg. 5656.

[24] The former General Counsel immediately announced that he deemed himself bound by the Board's decision. Daily Labor Report, October 7, 1947, No. 196, p. A–1.

its meaning." The Board further found that the problems which gave rise to enactment of the statute, and the methods selected by Congress for dealing with those problems, did not require that the A. F. L. and C. I. O. be deemed to have been included. The Board pointed out (75 N. L. R. B., at pp. 15–16):

> * * * We must assume that Congress intended to effectuate the policies of the Act by the most practical means available. Under the Regional Director's ruling, if one officer of the A. F. L. or C. I. O. fails to comply, not a single complying local or international union within that federation can derive any benefit from its own clean hands. In consequence, there being no conceivable advantage to such unions in bothering to comply with Section 9 (h), they would be no better off than labor organizations that might be unable to comply because of the actual presence of Communist officers. The latter would be under no pressure to stand up in the spotlight and be counted; the individual members of these unions, in turn, would lose all incentive to eliminate such officers in order to enjoy the fruits of compliance. And employers would find the Board's machinery unavailable to handle controversies which, though normally brought to our attention by labor organizations, require peaceful resolution for these employe[r]'s own sake. Nothing, it seems to us, could play more readily into the hands of dissension-seeking Communist

leadership. We cannot believe that Congress intended any such paradoxical result.[25]

At the end of September, 1947, shortly before the Board's announcement of its decision in the *Virginia Broadcasting* case, only 837 local and 63 national and international unions had come into compliance. By the end of October these figures had increased to 2,395 and 110, respectively, By the end of the year, 3,410 locals were in complete or incomplete compliance.[26]

C. THE BOARD'S COMPLAINT AND PROCEEDINGS THEREON

One of the unions which seized the opportunity to qualify for access to the Board's processes was

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[25] The Board has adhered to its ruling in *Northern Virginia Broadcasters* in an unbroken line of decisions, *Ohio Oil Co.*, 92 N. L. R. B. No. 236, 27 L. R. R. M. 1288; *Southland Manufacturing Co.*, 91 N. L. R. B. No. 38, 26 L. R. R. M. 1579; *Reynolds & Manley Lumber Co.*, 90 N. L. R. B. No. 289, 26 L. R. R. M. 1438; *Rubin Bros. Footwear Inc.*, 91 N. L. R. B. No. 1, 26 L. R. R. M. 1454; *J. H. Rutter-Rex Manufacturing Co.*, 90 N. L. R. B. No. 15, 26 L. R. R. M. 1170; *Goodyear Rubber Sundries, Inc.*, 92 N. L. R. B. No. 208, 27 L. R. R. M. 1253; *Metropolitan Life Insurance Co.*, 90 N. L. R. B. No. 129, 26 L. R. R. M. 1294; *Bethlehem Steel Co.*, 89 N. L. R. B. No. 33, 25 L. R. R. M. 1564; *Burruss Timber Products, Inc.*, 87 N. L. R. B. 1561; *Anchor Rug Mill*, 85 N. L. R. B. 764; *Chesapeake and Potomac Telephone Co. of Virginia*, 82 N. L. R. B. 810; *United States Gypsum Co.*, 81 N. L. R. B. 310; and *McGraw-Curran Lumber Co.*, 79 N. L. R. B. 705.

[26] All compliance figures are from the records of the Affidavit Compliance Branch. The term "incomplete compliance" denotes the status of unions which have attempted to come into compliance but have made technical errors in the required documents or their submission.

the Textile Workers Union of America, CIO, the Union here involved. It came into compliance on October 20, 1947, less than a month after announcement of the Board's position in the *Northern Virginia Broadcasters* case, and has remained in compliance to the present time. The C. I. O. did not comply until December 22, 1949; the A. F. L. came into compliance in November, 1947.[27]

On January 10, 1949, the former General Counsel, having determined administratively that under the Board's construction of Section 9 (h) the charging union was in full compliance, issued a complaint on the basis of the Union's charge of September 13, 1947. Following the usual proceedings under Section 10, the Board, rejecting respondent's contention that the Union's

[27] Under the Board's ruling, compliance by the C. I. O. and A. F. L. with Sections 9 (f), (g) and (h) is of significance only on those rare occasions in which the C. I. O. or A. F. L. itself seeks certification or files a charge or where it exercises the same control over the petitioning or charging union which a national or international union would. In those cases the Board requires compliance by the federation with Sections 9 (f), (g) and (h), as a condition precedent to the petitioning or charging union's access to the Board's facilities, on the ground that when a federation acts as an international union it must comply with the requirements imposed on national or international unions by those sections. *American Optical Co.*, 81 N. L. R. B. 453; *American Laundry Machinery Co.*, 81 N. L. R. B. 534; Compare *S. W. Evans & Son*, 75 N. L. R. B. 811.

majority status had not been properly established, found that respondent had violated Sections 8 (a) (5) and (1) of the Act, as amended, and entered a customary remedial order (R. 1–7). The Board (R. 2), like the Trial Examiner (R. (10), rejected respondent's additional contention (Tr. 40–41), that the complaint should be dismissed because the charging union, by virtue of the C. I. O.'s noncompliance, was not in compliance with Sections 9 (f), (g) and (h) at the time the complaint was issued.

On March 14, 1950, the Board filed in the court below a petition for enforcement of its order (R. 115–117). On September 2, 1950, the court handed down its opinion in which, without passing on the merits, it set aside the Board's order on the ground that federations such as the A. F. L. and C. I. O. are comprehended by the term "national or international labor organization" as used in Section 9 (h). In so holding the court below expressly stated (R. 121, 124), that it disagreed with the Court of Appeals for the District of Columbia Circuit, which had sustained the Board's construction, *West Texas Utilities Co.* v. *National Labor Relations Board,* 184 F. 2d 233, and that it agreed with the contrary view adopted by the Court of Appeals for the Fifth Circuit, *National Labor Relations Board* v. *Postex Cotton Mills,* Inc., 181 F. 2d 919.

SPECIFICATION OF ERRORS TO BE URGED

The Court below erred:

1. In assuming jurisdiction, at the request of the employer, to determine whether the charging union was in compliance with Section 9 (h).

2. In holding that Section 9 (h) required officers of the CIO to sign non-Communist affidavits as a prerequisite to the issuance of the Board's complaint, although the charging union was an international union whose officers had complied with the Section.

3. In refusing to enforce the Board's order because the CIO officers had not filed non-Communist affidavits at the time the complaint issued.

SUMMARY OF ARGUMENT

I

The court below set aside the Board's order on the sole ground that the international union, on whose charge the Board's complaint issued, was not in compliance with the provisions of Section 9 (h) of the Labor Management Relations Act. It is undisputed that although the officers of the international union had filed the non-Communist affidavits required by that section, the officers of the C. I. O., with which the international was affiliated, had not. The court, rejecting the Board's contrary construction of the Act, held that the failure of the C. I. O. officers to file prevented the charging union from being in compliance.

Before this Court can reach that question, we believe it is necessary for it to consider a fundamental issue as to the scope of the judicial function in reviewing decisions of the Board. In our view, the question whether a charging union has complied with the provisions of Section 9 (h), and of the cognate provisions of Section 9 (f) and (g), is not litigable before the Board or in the courts on review of a Board decision. This conclusion, we believe, is required by the structure of the Act, its legislative history, the practical consequences of permitting such issues to be litigated, and the lack of any legal interest in the employer to litigate them.

A. The Act contemplates that decisions as to compliance will be made administratively by the General Counsel, the Board, and the Secretary of Labor prior to the institution of formal Board proceedings in either representation or complaint cases. It prescribes no procedure, formal or informal, to be followed in making such determinations. It makes no provision for notice or hearing to either the labor organization affected or the employer named in the petition or charge. Decisions as to compliance are thus of an entirely different character than those decisions of the Board which are required by Congress to be made after notice and hearing and for which judicial review was expressly provided. Indeed, it is clear that a labor union determined not to be in compliance would have no opportunity for re-

viewing that determination; it would be anomalous to afford the employer any greater right.

This conclusion is reinforced by consideration of the nature of procedings, like the present, to remedy unfair labor practices, and the relationship of questions of compliance to those proceedings. It is clear that questions of compliance do not affect the employer's substantive obligations under the Act or the Board's jurisdiction to redress violations of those obligations. Sections 9 (f), (g) and (h) do not purport to modify the duties or liabilities imposed on employers by Section 8. They do not preclude the Board from proceeding against the employer on charges filed by anyone other than a non-complying union. Since the union's non-compliance does not relieve the employer of his substantive obligations, it would be anomalous to permit the employer to put questions of compliance in issue in an unfair labor practice proceeding. The issue in such a proceeding is ordinarily confined to the question whether the employer has engaged in the unfair labor practice charged in the complaint. Indeed, in those few instances in which Congress intended to make preliminary determinations of the Board reviewable in unfair labor practice proceedings, it expressed that intention explicitly.

Congress undoubtedly had power thus to make administrative determinations of the fact of compliance conclusive. *Switchmen's Union* v. *Na-*

tional Mediation Board, 320 U. S. 297, 303. And the history of the Act, its structure, and the delicacy of the problems with which it deals, make it clear that "Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate," *Amazon Cotton Mill Co.* v. *Textile Workers Union,* 167 F. 2d 183, 186 (C. A. 4).

B. The Board's conclusion that issues of compliance were not to be the subject of proof and controversy in representation or unfair labor practice proceedings was explicitly called to the attention of Congress by the Joint Committee on Labor Management Relations established pursuant to Section 401 of the Taft-Hartley Act to investigate and report to Congress (Section 402 (7)) on the "administration and operation of existing Federal laws relating to labor relations." In so doing, the members of that committee expressly approved the Board's conclusion as tending to avoid intolerable delays in Board proceedings. Indeed, the history of the Act reflects a strong legislative concern that the requirements of Sections 9 (f), (g) and (h) should not so operate as to delay proceedings of the Board. It was for this reason that Congress rejected the original proposal which would have barred unions from use of the Board's facilities if any of their officers were in fact Communists, and substituted the much simpler requirement of a non-Communist affidavit.

The legislative history of the Act also makes it clear that the financial statements which unions ~~and~~ are required to furnish by Section 9 (f) were intended to be confidential and were to be made available only to union members and appropriate governmental officials. That expressed intention clearly shows that Congress did not contemplate that an employer would have any right to litigate, before the Board or in the courts, questions of a union's compliance with Section 9 (f). And since Sections 9 (f) and (h) are directly parallel, the same conclusion follows as to Section 9 (h).

C. To permit litigation of issues of compliance would create innumerable opportunities for delay in Board proceedings. The number of issues which could be raised by employers and as to which evidence would have to be taken and argument had before both the Board and the courts if compliance questions could be litigated is legion. For example, there could be innumerable contentions as to who were in fact and in law the "officers" of the charging union and of any national or international labor organization with which it was affiliated. Many questions could also be presented as to the identity of the organizations with which the charging union was affiliated. The range of issues which could arise under Sections 9 (f) and (g) is even greater. Employers might seek to contest the accuracy of the financial information submitted by the union or the soundness of the accounting methods used

in preparing financial statements. And, since the Act requires that the union submit its financial information to all of its members, employers might seek to show that any one of the several hundred or thousand union members had failed to receive the report, or that the method of distribution adopted by the union was not adequate. Finally, it should be noted that, as a practical matter, compliance issues arise not once but continuously throughout the Board's proceedings. To permit litigation of compliance at all such stages would make a merry-go-round of the Act.

D. The conclusion that issues of compliance were not intended to be litigable is reinforced by the fact that an employer has no legal interest in those issues. As we have pointed out, the Act does not purport to immunize or excuse unfair labor practices in cases where a non-complying union is involved. The legislative history makes it clear that Sections 9 (f), (g) and (h) were not adopted for the benefit of employers, but rather for the benefit of union members and the public generally. If in some cases employers may escape legal responsibility by reason of the union's non-compliance, that result is purely fortuitous and, indeed, inconsistent with the Act's fundamental objective of preventing unfair labor practices. In such circumstances it is clear that Congress cannot be taken to have conferred on

employers any legal rights which they have standing to assert as a defense to unfair labor practice proceedings. Compare *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113; *Stark* v. *Wickard*, 321 U. S. 288, 306.

II

If it be assumed, however, that the issue whether the charging union was in compliance is properly before this Court, we believe it clear that the Board's decision of the question of statutory policy involved should not have been overturned by the court below. Before considering in detail the statutory language, its history and purpose, we think it important to point out that the Board's construction of the Act in this respect was called in the most emphatic way to the attention of the Congress which enacted it. The question was the subject of intense public controversy between the former General Counsel and the Board, the former General Counsel taking the view adopted by the court below and the Board taking the contrary view. The Congressional "watch dog" committee, established pursuant to Section 401 of the Act, discussed in detail in its first report the Board's position and the reasoning advanced by the majority of the Board. Although criticizing some aspects of the administration of the Act, it voiced no criticism of the Board's decision on this issue and concluded its report with the observations that "the Act is being

well administered," and that in the "situations to which various provisions of the new law have been applied," "the law has adequately provided a remedy for the abuses which Congress sought to correct." This clear approval of the Board's decision expressed to the Congress by which the Act had been passed by a committee charged by the Act with reporting to Congress on its administration, is entitled, we believe, to the greatest weight in considering whether the Board's construction correctly reflected the intention of the framers of the Act.

A. The Act calls for the submission of affidavits by each officer of the charging labor organization and "the officers of any national or international labor organization of which it is an affiliate or constituent unit." The phrase "national or international labor organization" has a well settled meaning in the field of labor relations; it applies to the great autonomous national and international unions which are the basic units of the labor movement and which may or may not be affiliated with a federation such as the A. F. L. or C. I. O. Thus, for example, the *Handbook of American Trade Unions,* U. S. Department of Labor, Bureau of Labor Statistics Bull. No. 618 (1936 ed.), p. 49, states that "Structurally the American Federation of Labor continues to be what it was at its inception—a federation of autonomous *national* and *international organizations* of workers in various crafts, trades and industries."

[Emphasis added.] Accordingly, the Board, basing its decision on its own knowledge and experience, and its familiarity with the literature in the field, held that the accepted use of the statutory terms was one which excluded federations such as the A. F. L. and C. I. O.

The legislative history lends support to this conclusion. It indicates that the concern of Congress was with the existence of Communist control over those bodies which participated in collective bargaining and were empowered to call strikes—powers and functions which are exercised by locals and by national and international unions, but not by the federations. Indeed, if it were to be assumed that Congress did not use these terms in the sense in which they have acquired an established meaning in the labor field, but meant them rather to apply to any body, national or international in scope, with which labor unions are affiliated, the result would be that the Act would require, as a condition to a union's eligibility to avail itself of the Board's processes, that non-Communist affidavits be filed by the officers of such organizations as the World Federation of Trade Unions and the International Labor Organization—a patently absurd result.

B. The Board's construction will tend to effectuate the purpose of the Act. The concern of Congress was with the power of Communists in those organizations which have direct control over the calling of strikes. The organizations

which have that power and control are the local unions and their national or international parents and not the federations. Moreover, Congress' scheme was to rely on the incentive of union members to oust from office those officers who would not file the requisite affidavits. Members of local unions can accomplish this objective with respect to officers of their locals and to their national or international officers, but not with respect to officers of federations, for they are not even members of the federation and have no power to vote, either in person or through their local delegates, for or against particular federation officers. Moreover, to require the filing of affidavits by officers of the federation would have meant that so long as one federation officer refused to file, none of the local and national or international unions affiliated with that federation could have utilized the Board's services at all, unless and until the international seceded from the federation or the federation expelled those international unions whose officers refused to file affidavits. Unless and until this happened, officers of local or national and international unions would escape the pressure which Congress clearly intended to bring to bear on them.

C. Accordingly, we believe the Board's construction correctly reflects the legislative intention. Even if the matter were more doubtful than it is, we believe that that construction should stand unless it can be said to be clearly unrea-

sonable. The question at issue is peculiarly one which calls for the Board's expert knowledge and for the Board's informed judgment as to the practical consequences in effecting the policies of the Act which might flow from any rule adopted.

III

It is not disputed that the C. I. O. officers have subsequently come into compliance. A dismissal of the present complaint would leave outstanding the original charge, on which a new and unassailable complaint could immediately issue. In such circumstances, we suggest that waste motion can properly be avoided by a holding that the subsequent compliance of the C. I. O. has cured any defect which might initially have existed.

ARGUMENT

INTRODUCTION

The court below set aside the Board's order on the sole ground that the Board lacked authority to issue the complaint on which the order was based. Respondent's challenge to the Board's authority to issue the complaint was based upon its contention that the charging union had not complied with Section 9 (h) at the time the complaint was issued, and that the Board's contrary determination was incorrect. In reviewing and sustaining this contention the court below assumed without discussion that the Board's determination that a charging labor organization has complied with Sections 9 (f), (g) and (h)

is subject to judicial review at the instance of an employer in an unfair labor practice proceeding based upon charges filed by such organization. We submit that this assumption, which underlies the action of the court below in setting aside the Board's order, warrants careful examination. Since the issue concerns the jurisdiction of the courts and the proper exercise of the judicial function in reviewing decisions of the Labor Board, it is one which we believe must be decided by this Court before it can reach the further question of whether the Board's determination was correct. Compare *Switchmen's Union* v. *National Mediation Board,* 320 U. S. 297; *Oklahoma* v. *Civil Service Commission,* 330 U. S. 127, 134–135. See also, *Brotherhood of Carpenters* v. *United States,* 330 U. S. 395, 412.

It is our view that Congress intended that questions of compliance with those provisions should be determined by the General Counsel and the Board in their administrative capacities, and that these administrative determinations should be final and not subject to judicial review. In Point I of this brief, we shall discuss the considerations which we believe require that result. In Point II we shall argue that, assuming the matter to be judicially reviewable, the Board was correct in deciding that compliance by the C. I. O. officers with Section 9 (h) is not a prerequisite to issuance of a complaint based on a charge of a local, national, or international union affiliated with the C. I. O.

I

THE ADMINISTRATIVE DETERMINATION THAT A MOVING LABOR ORGANIZATION HAS COMPLIED WITH SECTIONS 9 (f), (g) AND (h) IS NOT SUBJECT TO JUDICIAL REVIEW AT THE INSTANCE OF AN EMPLOYER IN AN UNFAIR LABOR PRACTICE PROCEEDING

A. *The structure of the Act establishes that Congress intended compliance determinations to be made administratively, and that it did not intend to subject such determinations to litigation in representation or unfair labor practice proceedings*

Sections 9 (f), (g) and (h) are procedural amendments to the National Labor Relations Act. They establish conditions which must be satisfied by labor organizations seeking to utilize the machinery of the Act for the investigation of questions concerning representation or the remedying of unfair labor practices. Responsibility for interpreting Sections 9 (f), (g) and (h), for facilitating compliance by labor organizations, and for determining whether a moving labor organization has satisfied the conditions of Sections 9 (f), (g) and (h), was vested by Congress in administrative officials: the Board, the General Counsel, and the Secretary of Labor. The Act contemplates that their responsibilities in this sphere shall be exercised prior to the institution of proceedings in either representation or complaint cases. Section 9 (h) provides, for example, that unless the requisite affidavits are "on file with the Board," "[n]o investigation shall be made by the

Board of any question * * * concerning the representation of employees * * * and no complaint shall be issued." Sections 9 (f) and (g) likewise contemplate that determinations as to compliance will be made prior to the institution of representation or complaint proceedings.

The statute contains no provision for any procedure, formal or informal, to be followed by the Secretary of Labor, the General Counsel or the Board in determining whether affidavits and information filed by labor organizations pursuant to Sections 9 (f), (g) and (h) satisfy their requirements. There is no provision for notice or hearing to the labor organization affected. Similarly there is no requirement that the Board or the General Counsel afford a hearing to the employer named in the petition or charge before determining that the moving labor organization has complied with these provisions. Congress evidently contemplated that the judgment of the Board and the General Counsel as to whether a labor organization had complied would be exercised on the basis of administrative investigation only.

Determinations of this character are thus entirely different from decisions of the Board, required by Congress to be made after hearing and upon a record, that a question concerning representation exists (Section 9 (c) (1)), or that an unfair labor practice has been committed (Section 10 (c))—quasi-judicial decisions which Congress

in Sections 10 (e) and (f) has authorized the courts to review. Insofar as the structure of the Act is concerned, compliance determinations not only precede, but are entirely separate from, proceedings in representation and in unfair labor practice cases. It would accordingly seem that in an unfair labor practice proceeding, such as the present, determinations as to compliance with Sections 9 (f), (g) and (h), which are properly made prior to the institution of formal proceedings, without notice or hearing, and upon the basis of administrative investigation only, may not be considered a part of the record before the reviewing court.

Congress made no provision for judicial review of determinations as to compliance even at the instance of labor organizations directly affected by them. Thus, where the Board refuses to proceed with investigation of a petition for certification filed by a labor organization, or the General Counsel refuses to issue a complaint on charges filed by such organization, because it has been administratively determined that the organization was not in compliance with Sections 9 (f), (g) or (h), it has uniformly been held that the labor organization may not secure judicial review of that determination. *Lincourt* v. *National Labor Relations Board,* 170 F. 2d 306 (C. A. 1); *Fay* v. *Douds,* 172 F. 2d 720 (C. A. 2); *Fitzgerald* v. *Douds,* 167 F. 2d 714 (C. A. 2);

Haleston Drug Stores v. *National Labor Relations Board*, 186 F. 2d —, 27 L. R. R. M. 2401 (C. A. 9); *General Drivers, Chauffeurs, and Helpers* v. *National Labor Relations Board*, 179 F. 2d 492 (C. A. 10).[28]

The fact that the labor organizations directly affected by a decision as to compliance are denied any hearing or right to judicial review in connection with determinations by the Board and the General Counsel that they have not complied with Sections 9 (f), (g) and (h), is a strong indication that employers were not intended to be given any right to challenge such determinations in representation or unfair labor practice

[28] A few actions have been maintained to enjoin enforcement of Section 9 (h) on the ground of unconstitutionality, *American Communications Ass'n* v. *Douds*, 339 U. S. 382; *National Maritime Union* v. *Herzog*, 78 F. Supp 146 (D. D. C.); *Wholesale and Warehouse Workers' Union* v. *Douds*, 79 F. Supp. 563 (S. D. N. Y.). The sole issue in these cases was the constitutional one, there being no dispute as to the fact of non-compliance.

In *United Steelworkers* v. *National Labor Relations Board*, decided together with *American Communications Ass'n* v. *Douds*, *supra*, this Court considered the constitutional issue on an appeal by the union from a Board order, based on a complaint issued prior to the Taft-Hartley amendments, which conditioned its direction to the employer to bargain on compliance by the union with Section 9 (h). No issue as to the fact of non-compliance was presented. Moreover, in a case in which the Board or General Counsel refused to issue a complaint or investigate a petition on the ground of non-compliance, no appeal by the union would lie because there would be no final Board order of the type reviewable under Section 10 (f). See cases cited in the text.

proceedings before the Board or the courts. As we shall show, *infra*, pp. 46–48, Congress was aware that the mere making of administrative determinations as to compliance by the Board and the General Counsel would itself delay the prosecution of unfair labor practice cases and the resolution of questions concerning representation. Congress desired to minimize the delay so far as possible, and to this end, it sought to simplify and narrow the administrative task of making such determinations, *infra*, pp. 45–48. If employers were permitted to raise and to litigate questions of compliance in the course of representation or unfair labor practice proceedings, these proceedings might be clogged with ancillary issues, and the objective of Congress to prevent compliance matters from indefinitely delaying the resolution of such cases on their merits would be frustrated.

In the instant case the employer attempts to litigate questions of compliance in an unfair labor practice proceeding. Consideration of the issues normally open in such a proceeding, and the lack of relation of questions of compliance to those issues, strongly indicates the inappropriateness of such an attempt.

It should be emphasized at the outset that questions of the union's compliance with Sections 9 (f), (g) and (h) in no way affect the employer's substantive obligations under the Act or the

Board's jurisdiction to redress violations of these obligations, but go only to the union's standing to utilize the Board's facilities. *National Labor Relations Board v. Greensboro Coca Cola Bottling Co.*, 180 F. 2d 840, 845 (C. A. 4). Those provisions do not, in their terms or context, purport to modify any of the duties and liabilities imposed on employers by Section 8.[29] Congress did not, as it could easily have done, declare that interference by employers with employees' rights of self-organization (Section 8 (a) (1)) was not unlawful if those rights were exercised through a non-complying union; or that employer interference with the administration of a non-complying union was permissible (Section 8 (a) (2)); or that a discriminatory discharge of a member of a non-complying union was not unlawful (Section 8 (a) (3)); or that a refusal to bargain collectively with a non-complying union was not unlawful (Section 8 (a) (5)).[30] Indeed, noth-

[29] In this connection it should be noted that the unfair labor practice here complained of occured *prior* to the enactment of the Taft-Hartley Act. See pp. 3, 5, *supra*.

[30] The Board, in the exercise of its discretion to so frame its orders as to effectuate the policies of the Act, will not direct an employer to bargain with a union which is not in compliance with Section 9 (h) at the time of its order. In such a case its practice is to issue an order directing bargaining on condition that the union comes into compliance. E. g., *Marshall and Bruce Co.*, 75 N. L. R. B. 90, 94–6; *Inland Steel Co.*, 77 N. L. R. B. 1.

The adoption by the Board of such a practice does not amount to a modification of the employer's obligations. The order is based on a finding of unfair labor practice; it directs

ing in Sections 9 (f), (g) and (h) even refers to compliance by the union at the time of an asserted violation of the Act; they merely relate to compliance at the date of issuance by the Board of a complaint on a charge filed by a union.[31]

If Congress had intended that Sections 9 (f), (g) and (h) should modify the substantive obligations imposed on the employer it would have been an easy matter to express that intention in the draftsmanship of the Taft-Hartley amendments. For example, Section 8 (a) (5), as it stood prior to the amendments, provided that it should be an unfair labor practice for an employer

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the employer to bargain, subject to a condition which the union has unilateral power to remove by coming into compliance. (For these reasons, an order so conditioned was held a final order reviewable by the employer in *Inland Steel Co.* v. *National Labor Relations Board*, 170 F. 2d 247 (C. A. 7), certiorari denied, 336 U. S. 960; see 339 U. S. 384).

[31] The Board has held that, in some circumstances at least, it will find an unfair labor practice in a refusal to bargain at a time when the union was not in compliance, and will issue an order directing bargaining if the union has subsequently come into compliance. *New Jersey Carpet Mills, Inc.*, 92 N. L. R. B. No. 122, 27 L. R. R. M. 1114; *Alpert & Alpert*, 92 N. L. R. B. No. 127, 27 L. R. R. M. 1144. The Board has not definitively passed on the question whether, in the exercise of its administrative discretion, it will issue such an order in the case of a refusal to bargain which had been expressly based on contemporaneous non-compliance. See Memorandum for the Board in No. 466, *West Texas Utilities Co.* v. *National Labor Relations Board*, pp. 7–8.

> To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

All Congress would have had to do, had it intended to modify this obligation, was to add after "Section 9 (a)" the letters, "(f), (g) and (h)."

Indeed, when the framers of the Taft-Hartley amendments did wish to modify the employer's substantive obligations, they were careful to use clear language of exculpation. Thus prior to the amendment, Section 8 (a) (3) had read in pertinent part:

> It shall be an unfair labor practice for an employer * * * By discrimination * * * to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act * * * shall preclude an employer [from making a closed shop agreement with a union] if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

To this wording the amendment added in pertinent part:

> and (ii) if * * * the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: * * *

Thus, the pattern of the legislation as a whole demonstrates that when Congress intended to

modify employers' duties and rights under the Act, it used clear language, keyed directly to Section 8 (a), to accomplish that purpose.

Moreover, it is clear that Sections 9 (f), (g) and (h) do not bar the Board from proceeding against an unfair labor practice upon a charge filed by any person or organization other than a non-complying union. Although the Act requires a charge precedent to issuance of a complaint, it in no way limits the persons by whom such a charge may be made. *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U. S. 9, 17. Thus, a charge could have been made in this case by some other person, and indeed even by a member of the assertedly non-complying union (*National Labor Relations Board* v. *Augusta Chemical Co.*, 186 F. 2d, 27 L. R. R. M. 2350 (C. A. 5); *Fredrica Clausen* d/b/a *Luzerne Hide & Tallow Co.*, 89 N. L. R. B. No. 119, 26 L. R. R. M. 1076). There can be no doubt that on such a charge the Board could have proceeded against the unfair labor practice charged. That Congress, while imposing a barrier where charges are filed by non-complying unions, left open other avenues of relief against the same employer conduct clearly indicates that the provisions of Sections 9 (f), (g) and (h) were in no way intended to change the substantive law applicable in unfair labor practice proceedings, or to affect the obligations imposed on employers by Section 8 of the Act.

Since the issue of compliance does not go to the question whether an unfair labor practice has been committed, it would be anomalous to permit it to be litigated in an unfair labor practice proceeding under Section 10. The issue in such a proceeding is whether "any person named in the complaint has engaged in or is engaging in any such unfair labor practice" (Section 10 (c)). "When a Board complaint issues the question is only of the truth of its accusations." *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U. S. 9, 18; *National Labor Relations Board* v. *Fulton Bag and Cotton Mills*, 180 F. 2d 68, 71 (C. A. 10). When Congress desired to authorize review of preliminary determinations which were deemed relevant to Section 10 proceedings it specifically so provided. Thus, in Section 9 (d), Congress provided that when a Board decision in an unfair labor practice case was based in whole or in part upon a prior representation proceeding the record in the representation proceeding was to be included in the transcript of the "entire record" required to be filed in the reviewing court, and that the "decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript." In such cases the representation proceeding is relevant to the issue of unfair labor practice because it determines the union with

which the employer is obligated by the Act to bargain in good faith. Indeed, as we have noted, *supra*, p. 37, the obligations of Section 8 (a) (5) are expressly made subject to the provisions of Section 9. On the other hand, Congress did not provide that compliance determinations by the Board or the General Counsel, or the administrative investigations or statutory interpretations upon which such determinations are based, should be included in the record in representation proceedings under Section 9, or unfair labor practice proceedings under Section 10. Congress thus distinguished matters going to the substance or existence of the employer's obligation from matters such as union compliance with Sections 9 (f), (g) and (h), which go only to the standing of the union to invoke the facilities of the Board. The former could be litigated before the Board and the courts; the latter issues were not to be litigable.

In an analogous situation the courts have uniformly held that collateral issues could not be litigated in unfair labor practice cases. A rider to an appropriation act of 1944 (Act of July 12, 1943, 57 Stat. 494, 515) provided that no part of the appropriation should be used in "connection with a complaint case arising over" a labor-management agreement which had been in existence for three months or more prior to filing of the charge. The courts uniformly sustained the Board's position that an objection to an unfair labor practice order founded on this pro-

vision "is not within our powers of review under § 10 (e) of the Act, 29 U. S. C. A. § 160 (e), or one that respondent may raise, under *Alabama Power Co.* v. *Ickes*, 302 U. S. 464, 478–480 * * * and other cases." *National Labor Relations Board* v. *Elvine Knitting Mills*, 138 F. 2d 633, 634 (C. A. 2). Accord: *National Labor Relations Board* v. *Baltimore Transit Co.*, 140 F. 2d 51, 58 (C. A. 4), certiorari denied, 321 U. S. 795; *S. H. Camp & Co.* v. *National Labor Relations Board*, 160 F. 2d 519, 521 (C. A. 6); *National Labor Relations Board* v. *Thompson Products*, 141 F. 2d 794 (C. A. 9).

There can be no doubt that it was in the power of Congress to make the Board's determination of the fact of compliance conclusive. In *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297, 303, this Court gave short shrift to a similar objection:

> The fact that the certificate of the Mediation Board is conclusive is of course no ground for judicial review. *Great Northern Ry. Co.* v. *United States*, 277 U. S. 172, 182. Congress has long delegated to executive officers or executive agencies the determination of complicated questions of fact and of law. And where no judicial review was provided by Congress this Court has often refused to furnish one even where questions of law might be involved. See *Louisiana* v. *McAdoo*, 234 U. S. 627, 633; *United States* v. *George S.*

Bush & Co., 310 U. S. 371; *Work* v. *Rives*, 267 U. S. 175; *United States* v. *Babcock*, [250 U. S. 328].

These considerations, there deemed sufficient to bar review by a person directly affected, are applicable, *a fortiori*, to a claim that matters such as this can be litigated by one who, like the employer here, has at most a collateral interest. See pp. 71–72, *infra*.

In short, we conclude, from the structure of the Act which carefully separates compliance issues from issues going to the merits of a representation or unfair labor practice proceeding; from the failure of Congress to provide for the conduct of hearings and taking of evidence with respect to compliance; and from the fact that Congress has shown consistent care in specifying those issues which were to be subject to judicial review, that questions of compliance with Sections 9 (f) (g) and (h) were not intended to be litigable before the Board or in the courts. In this connection, the observation of the Court of Appeals for the Fourth Circuit in *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F. 2d 183, 186, though made in response to a different contention, is entirely apposite:

> What was said by the Supreme Court in *General Committee* v. *Missouri K. T. R. Co.*, 320 U. S. 323, 332, 333, 64 S. Ct. 146, 150, 88 L. Ed. 76, with respect to the Railway Labor Act, 45 U. S. C. A. § 151 et seq.,

is applicable also to the National Labor Relations Act and the Labor Management Relations Act amending it. The Court said: "On only certain phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsions of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate."

B. *Congress has clearly shown that it neither contemplated nor desired litigation of compliance issues*

The Board has uniformly taken the position that questions of compliance with Sections 9 (f), (g) and (h) are to be determined by the Board and the General Counsel administratively and that issues concerning compliance may not be litigated by the parties in the course of hearings on representation or unfair labor practice questions.[31a] The Joint Committee on Labor Management Relations, established pursuant to Section 401 of the

[31a] National Labor Relations Board, *Fifteenth Annual Report.* (Gov't Print. Off., 1951) pp. 19–20, and cases there cited.

Taft-Hartley Act to investigate and report to Congress (Sec. 402 (7)) on the "administration and operation of existing Federal laws relating to labor relations" has unequivocally approved this view. In its Report, S. Rep. No. 986, Part 3, 80th Cong., 2d Sess., 1948, p. 45, the Committee, after recommending that Section 9 (h) be amended in certain respects, declared as follows:

> The committee wishes to emphasize as strongly as possible that in any consideration of amendments to this section, great care must be given to prevent litigation of the question in Board hearings. If the parties to Board hearings are permitted to question the veracity of the affidavit, or the fact as to it having been filed, records will be hopelessly overburdened with such proof. Board hearings must be confined to evidence going into merits of the case at hand if the Board is to carry out its real function of deciding unfair labor practice cases and determining bargaining representatives. The board recognized this principle in *Lion Oil Co.* (15–R–2264) [76 N. L. R. B. 565, 566] when it upheld the ruling of the hearing officer in his denial of the employer's motion to dismiss the petition since the record did not show the petitioning union had complied with the requirements of Section 9 (f) and (h). The Board said that compliance is clearly for the Board to determine and its official records indicated that the union had complied.

The strong emphasis placed by the "watchdog" committee on the necessity of continuing to "prevent litigation of the question [of compliance] in Board hearings" makes it clear that the Board's treatment of compliance questions as a purely administrative matter accords with the intention of Congress. In view of the character of that Committee and the purposes for which it was set up, as well as the keen Congressional interest in the Taft-Hartley Act, (see pp. 83–90, *infra*), these declarations are "persuasive evidence of the adoption by Congress of the construction given the filing requirement here in question by the Board, in the *Lion Oil Co.* case." *National Labor Relations Board* v. *Wiltse* (C. A. 6), decided March 23, 1951, reprinted as Appendix III, *infra*, at p. 164.

Indeed, the same consideration to which the Committee referred, permitting the Board to "carry out its real function of deciding unfair labor practice cases and determining bargaining representatives" without becoming bogged down in compliance matters, led the Congress which enacted Section 9 (h) to eliminate from earlier versions of the Section features which had been criticized as creating endless delays. As originally passed by both Houses, Section 9 (h) provided in substance that no labor organization should be eligible for certification as a collective bargaining representative unless its officers were not Communists or fellow travelers. This provi-

sion, which would have required the Board to ascertain as a matter of fact whether the union officers were Communists, was changed in conference so as to require only that the officers file affidavits disavowing communistic affiliations and beliefs. Explaining this change to the Senate, Senator Taft, one of the principal proponents of the Act as well as one of the Senate conferees, said (93 Cong. Rec. 6444; Legislative History of the Labor Management Relations Act, 1947, p. 1542):

> Subsection 9 (h) of the conference agreement embodies the principle of an amendment adopted when the bill was being considered on the floor of the Senate which would have prevented a labor organization from being eligible for certification if any of its local, national, or international officers were members or affiliates of the Communist Party or believed in or supported organizations advocating the overthrow of the United States Government by force or any other illegal or unconstitutional method. There was a similar provision in the House bill, although the language was somewhat different. In reconciling the two provisions the conferees took into account the fact that representation proceedings might be indefinitely delayed if the Board was required to investigate the character of all the local and national officers as well as the character of the officers of the parent body or

> federation. The conference agreement provides that no certification shall be made or any complaint issued unless the labor organization in question submits affidavits executed by each of its officers and officers of its national or international body, to the effect that they are not members or affiliates of the Communist Party or any other proscribed organization.

In answer to a query on the floor of the Senate, Mr. Taft said (93 Cong. Rec. 6447, Leg. Hist. p. 1547):

> * * * The Senate adopted an amendment which provided that no union could be certified if any of its officers were Communists. That seemed to us impracticable. With the agreement of all the conferees we provided that the union must file an affidavit that none of its officers are Communists, or whatever the language may be. Otherwise, the way it was passed by the Senate, the whole certification might be tied up for months while determination was made as to whether a man was a Communist. Today it is provided that officers shall file statements to the effect that they are not Communists. If a man who files such a statement tells an untruth he is subject to the same statute under which Marzani was convicted last week.

Again in a Supplementary Analysis of the Act submitted to the Senate on June 12, 1947 (93 Cong. Rec. 6860, Leg. Hist. p. 1625), Senator Taft explained:

> SECTION 9 (h). This provision making the filing of affidavits with respect to Communist party affiliation by its officers a condition precedent to use of the processes of the Board has been criticized as creating endless delays. It was to prevent such delays that this provision was amended by the conferees. Under both the Senate and House bills the Board's certification proceedings could have been indefinitely delayed while it investigated and determined Communist Party affiliation. *Under the amendment an affidavit is sufficient for the Board's purpose and there is no delay unless an officer of the moving union refuses to file the affidavit required.* [Emphasis supplied.]

The foregoing statements clearly reveal that Congress believed and intended that compliance determinations would be made by the Board and the General Counsel administratively. Congress acted to assure that even administrative determination of questions of compliance would not unduly prolong the resolution of questions concerning representation and the remedying of unfair labor practices. *A fortiori,* Congress did not intend to sanction litigation of compliance questions in representation and unfair labor practice hearings, after they had administratively been determined by the Board and the General Counsel. For to sanction the litigation of such issues would provide opportunities for delaying resolution of

representation and unfair labor practice issues far more serious than any delays which were likely to occur during administrative investigation. The objective of Congress in providing machinery for the resolution of questions concerning representation and the remedying of unfair labor practices, removal of causes of industrial strife, is not achieved by the mere initiation of proceedings. And the concern of Congress that initiation of these proceedings not be unduly delayed makes equally clear its concern that their completion likewise should not be unduly delayed by the litigation therein of issues concerning compliance.

To effectuate the policy of Congress as evidenced by this legislative history, the courts have held that in unfair labor practice cases the Board is not required either to allege or to prove that the charging union was in compliance with Sections 9 (f), (g) and (h) when the complaint was issued. The Board has therefore not been required to include as part of the record in an unfair labor practice proceeding its determination that the charging union had complied, or to open to attack the bases, factual or legal, upon which its determination rested. Thus, in *National Labor Relations Board* v. *Greensboro Coca Cola Bottling Co.*, 180 F. 2d 840, 845 (C. A. 4), the court, in rejecting the view urged by the employer that in an unfair labor practice proceeding the General Counsel must allege and prove that the union was in compliance, stated:

> There is nothing in the language of the statute expressly requiring this; and if such view were to be taken, it would greatly hamper the administration of the act, since it would be incumbent upon the general counsel to show compliance, not only with the requirements as to filing affidavits but also with those requiring the giving of notice to members * * *. Surely nothing of the sort was contemplated in the passage of the statute; and it is well settled that the courts will not construe a statute in such way as to make it administratively unworkable if any other construction is possible. *Hagger* v. *Helvering,* 308 U. S. 389, 394, 60 S. Ct. 337, 84 L. Ed. 340; *Gruver* v. *Com'r,* 4 Cir. 142 F. 2d 363, 366; *Fides* v. *Com'r,* 4 Cir., 137 F. 2d 731.

Accord: *National Labor Relations Board* v. *Wiltse* (C. A. 6), decided March 23, 1951, Appendix III, *infra; National Labor Relations Board* v. *Red Rock Co.,* 186 F. 2d —, 27 L. R. R. M. 2355 (C. A. 5).

Congressional intention that compliance issues should not be litigated is shown in yet another way. As we have seen, Sections 9 (f) and (h) are parallel provisions; there is no conceivable basis on which one could be held to raise litigable issues and another not. As to the requirement of Section 9 (f) that unions submit financial reports, it is clear that Congress did not contemplate litigation. This appears from the fact that Con-

gress clearly understood that the financial reports which unions were to file under Section 9 (f) were not to be made available to the public. Senator Taft expressly so stated in explaining to the Senate the effect of Section 9 (f). He said (93 Cong. Rec. 3839, Leg. Hist. 1014; see also 93 Cong. Rec. 4284, Leg. Hist. 1150):

> Mr. President, the bill provides that unions must file financial reports on forms certified by the Secretary of Labor, and furnish the reports to all their members, and file a copy with the Secretary of Labor. *Such reports are not open to the public,* any more than corporation reports are open to the public; but they are open to inspection by the members, and they are also open to proper Government officials. *There is no special provision, but they are not specifically provided to be open to the public.* [Emphasis supplied.]

In executing its functions under Sections 9 (f) and (g) in accordance with this declared Congressional intent, the Department of Labor has issued a General Regulation (General Regulations of the Office of the Secretary of Labor, 29 CFR, Sec. 2.4 (1949)) stating that none of its officers or employees "shall make such information public, nor disclose such information to any person outside of the Department of Labor except, upon written request, to the following:"

> (1) members of a particular labor organization, or of the national or interna-

tional labor organization of which it is an affiliate or constituent unit, but only with respect to the information filed for such organizations; (2) the National Labor Relations Board or courts of competent jurisdiction in appropriate proceedings under the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947; or (3) members of Congress through the Senate Committee on Labor and Public Welfare, the House Committee on Education and Labor, or the Joint Committee on Labor-Management Relations.

To permit employers to litigate questions concerning union compliance with Section 9 (f) would be completely incompatible with this Congressional objective of not making the reports public, because the reports themselves would have to be introduced in evidence and would thereby be made available to the public. Moreover, Congress clearly understood that the reports were not to be available to employers. Without access to the reports employers lack the necessary information upon which any attack upon the accuracy or completeness of the union's compliance with the statutory requirements could be based. Clearly, had Congress intended to permit employers to challenge and to litigate the union's compliance with Section 9 (f), it would not have adopted an approach which virtually precludes such challenge. See *National Labor Relations Board* v. *Wiltse*, p. 164, *infra*.

Beyond this, Congress' division of responsibility for administering Section 9 (f) between the Secretary of Labor, the Board and the General Counsel make it apparent that Congress did not contemplate or intend that compliance issues were to be litigable. The documents and information contemplated by Section 9 (f) must be filed with the Secretary of Labor. It would seem to follow that the Secretary of Labor, not the Board or the General Counsel, was entrusted with initial responsibility for determining the form and content of the information to be filed, and the adequacy, accuracy and completeness of information. This has been the construction of the statute adopted by the Board, the General Counsel and the Secretary of Labor. The Board and the General Counsel have further assumed, in the absence of clear evidence to the contrary, that Congress could not have intended that they should act as a reviewing or revisory agency over determinations of the Secretary of Labor. Therefore, the Board and the General Counsel accept as final certificates of compliance with the filing requirements of Sections 9 (f) and (g) which are issued by the Secretary of Labor. To hold that compliance with Sections 9 (f) and (g) is litigable in unfair labor practice proceedings, however, would place in issue the administrative determinations of the Secretary of Labor. The Board would be required to determine whether the information which the Secretary certified as having

been filed with him was actually so filed, and whether the Secretary had properly construed the requirements of Sections 9 (f) and (g) and properly applied them in each particular case. Moreover, if the validity of compliance determinations by the Secretary were litigable, the Secretary would be required to defend his determinations both before the Board and in the courts. That Congress intended such results is beyond belief.

C. *To permit litigation of questions of compliance in representation and unfair labor practice proceedings would create innumerable opportunities for delay in Board proceedings and would thus tend to defeat the basic objectives of the Act*

To permit an employer to challenge in an unfair labor practice proceeding the propriety of the General Counsel's administrative determination that the charging union complied with Sections 9 (f), (g) and (h) prior to the issuance of the complaint, would open a Pandora's box of issues unrelated to the charges dealt with in the complaint, and would permit endless delay in the adjudication of those charges. Determination of compliance is not a simple matter. It requires resolution of numerous questions of fact as well as of law. If each of the subsidiary questions upon which a compliance determination rests could be called into question in an unfair labor practice

proceeding, the merits would be submerged in a welter of side issues.

Section 9 (h) alone affords endless opportunities for litigation. As we have indicated, p. 9, *supra,* the Board initially determined to treat as "officers" for the purpose of Section 9 (h) only those persons whom the union in its constitution and by-laws denominated officers. If compliance determinations were litigable, employers might have contended that all persons, regardless of their titles, who, in fact, exercised or were authorized to exercise duties and functions normally exercised by union officers, should have been required to file affidavits. The Board would have been compelled in every case to permit employers to introduce, in support of such a contention, evidence showing that persons other than those who filed affidavits actually exercised powers normally exercised by union officers. Proof and counterproof on this issue might have been adduced with respect to virtually every person performing any duties for the labor organization. Even if the Board's construction of the term "officers" were ultimately upheld, the resolution of the substantive issues in unfair labor practice cases would have been delayed indefinitely while the status of individuals as union officers was being litigated.

The Board subsequently adopted the practice of requiring non-Communist affidavits from persons other than those designated as officers by a union in its constitution, if the Board believes that their

names were omitted by the union for the purpose of circumventing Section 9 (h). If compliance issues were litigable, employers would doubtless attempt to prove that the union had omitted the names of various persons from its list of officers for the purpose of circumventing Section 9 (h), and that the Board had therefore erred in considering the union in compliance without requiring such persons to file affidavits. Hearings could be interminably delayed by proof and counterproof as to a union's motives for omitting the names of various persons from its list of officers.

Contentions of this nature could, moreover, be asserted not only with respect to the officers of the particular labor organization filing the charge, but also with respect to the officers of any national or international labor organization of which it is an affiliate or constituent unit. An illustration is provided in the Reply Memorandum filed in this Court by the petitioner in *West Texas Utilities Co. v. National Labor Relations Board*, No. 466, this Term, in which petitioner challenges the Board's determination that the A. F. L. complied with Section 9 (h) in November, 1947. In its memorandum petitioner attempts to show that the A. F. L., for the purpose of circumventing Section 9 (h), amended its constitution so as to eliminate from the category of officers various persons who had refused to file the affidavits, and that the Board therefore erred in determining that the affidavits actually filed by the persons

described as officers in the A. F. L. constitution were adequate to bring the A. F. L. into compliance. If compliance determinations were litigable, the facts concerning the alleged amendment of the A. F. L. constitution, and its purpose, would be subject to proof and counterproof in any case where compliance by the A. F. L. was deemed necessary.

Attacks upon compliance determinations could also be predicated upon allegations that the charging union was in fact affiliated with other labor organizations whose officers had not filed the affidavits, and that the Board's administrative determination that it was not so affiliated was erroneous. For example, in *National Labor Relations Board* v. *Dalton Telephone Corp.*, decided March 2, 1951 (C. A. 5), enforcing 82 N. L. R. B. 1001, the company filed a motion to remand, contending that the charging union, the Southern Federation of Telephone Workers, a regional labor organization, had not complied with Section 9 (h) both because the officers of the local union, which was a constituent unit of the charging union, had not filed the affidavits, and because, at the time the complaint was issued, the charging union was affiliated with a national labor organization whose officers had not filed. The former General Counsel had determined administratively, before issuing the complaint, that there was no local union in existence, and hence no local officers who were required to file the affidavits, and secondly, that

the regional organization was then affiliated not with the national organization referred to by the Company, but with a different national organization whose officers had filed the affidavits. The regional organization became affiliated with the national organization to which respondent referred only after the complaint had issued, and, by that time, the officers of that organization had filed the affidavits. If the compliance status of charging unions were subject to litigation all of these subsidiary determinations upon which the General Counsel's conclusion rested could be put in issue in the unfair labor practice proceeding.[31b]

In addition to these questions concerning the proper construction and application of the terms "officers" and "affiliated," many questions, among them the one which the employer seeks to raise in this case, could be presented concerning the construction and application of the term "national or international labor organization." A charging labor organization may be affiliated with numerous organizations concerned in advancing the interests of labor in various spheres, legal, political and economic. These may include not only the A. F. L. or the C. I. O., but also other groups such as the United Labor Policy Committee, International Labor Organization, In-

[31b] In the *Dalton* case the court denied the Company's "motion to remand this proceeding to the Board for further findings" because "we have found no basis for such motion" (slip op. p. 5).

ternational Confederation of Free Trade Unions, International Federation of Christian Trade Unions, Inter-American Confederation of Workers, etc. Whether one or more of these organizations should be deemed a "national or international labor organization" within the meaning of Section 9 (h), like the other questions discussed above, presents a mixed question of law and fact. To permit litigation of compliance issues would thus mean that unfair labor practice hearings could be turned into a forum for the resolution of issues concerning the structure, purposes, operating methods, etc., of each of the groups with which the particular labor organization which filed the charge is affiliated.

Indeed, if the Board's and the General Counsel's construction of Section 9 (h) in these respects could be challenged, other aspects of their administration of this provision could also be put in issue by employers in unfair labor practice proceedings. For example, employers could challenge the construction pursuant to which the Board extended beyond the effective date of the Act the period available to labor organizations for complying with this provision, *supra*, p. 8. They could argue that the Board and the General Counsel were bound to dismiss all petitions and charges pending on the effective date of the Act if the unions involved were not then in compliance.

Moreover, the language and structure of Section 9 (f), and its effect upon the issuance of complaints, is precisely the same as Section 9 (h). Hence, if compliance with Section 9 (h) were held litigable, compliance with Section 9 (f) could likewise be litigated. Litigation of compliance with Section 9 (f) could give rise to an even greater range of issues than those arising with respect to Section 9 (h).

To comply with Section 9 (f) (Appendix, pp. 142–144, *infra*) a labor organization must file with the Secretary of Labor a mass of detailed information including a copy of its constitution and bylaws, and a report showing the name of the union, the address of its principal place of business, the names of its three principal officers, the titles of the offices they hold, the amounts they receive as compensation and allowances, the names of other officers or agents whose compensation and allowances exceed $5,000, the titles of such officers, the manner of selecting all the above officers, the initiation fee for new members, and the regular dues for members. Labor organizations must also report, either separately or by reference to appropriate provisions in their constitution and bylaws, the following: any qualifications and restrictions as to membership; the procedures for the election of officers and stewards, the calling of regular and special meetings, the levying of assessments and fines, the authorization of bargaining demands, ratification of con-

tract terms, authorization for strikes, authorization for spending funds, and the audit of union financial transactions; union participation in insurance or benefit plans; and grounds and procedures for expulsion of members. In addition, a labor organization must make a financial report, and supply a copy thereof to each of its members, showing the union's total receipts for the past fiscal year, the source of such receipts, the union's total assets and liabilities as of the end of the past fiscal year, disbursements made during the fiscal year and the purpose of such disbursements. Section 9 (g) requires the labor organizations annually to file reports with the Secretary of Labor bringing the information previously supplied up to date, and to furnish the financial data to their members.

If litigation as to compliance were permissible, employers in unfair labor practice cases could raise an issue with respect to each of the separate items thus required, contending that the union had not filed with the Secretary one or more of the specified pieces of information. Beyond that, since the statute obviously contemplates that true and accurate information shall be filed, employers could contend, and introduce evidence to prove, that any one or more of the items of information supplied was, in one or more particulars, incorrect. For example, employers could contend that the union's statement of assets was grossly inaccurate because excess depreciation was taken, or because

reserves set up to meet contingent liabilities were excessive. The broad field of accounting practice, and with it the opportunity of adducing time-consuming expert testimony, would be opened up to employers.

The mere question whether the union has, as Sections 9 (f) and (g) require, furnished each of its members a copy of its financial report, offers an almost endless opportunity for litigation. If a union has 500 members, an employer would have 500 chances of finding some one of them who did not, or who is willing to say that he did not, receive a copy of the union's financial report. Even if 9 (f) were construed not to require the union actually to prove that each member received a copy of the report, but merely that it adopt a method of distribution reasonably calculated to reach each of the members, it would still be open to the employer to try to show that the method of distribution adopted by the union was not reasonable or adequate.

As the court pointed out in *National Labor Relations Board* v. *Greensboro Coca Cola Bottling Co.*, 180 F. 2d 840, 845 (C. A. 4), to construe the Act as permitting litigation of such issues in unfair labor practice hearings would make the Act unworkable.

Finally, it should be emphasized that as a practical matter compliance has to be determined, not once, but continuously throughout the Board's proceedings. For example, Sections 9 (f) and

(h) provide that, absent compliance by the petitioning labor organization, "no investigation shall be made by the Board of any question affecting commerce concerning the representation of employees." To give effect to this provision the Board must determine not only when the petition is filed, but at each subsequent stage of proceedings: before the hearing, before the direction of election, before conducting the election, and before issuing the certification, whether the petitioning labor organization, and any other labor organization which may be seeking certification in the same proceeding, is in compliance, since each of these steps is part of the "investigation." *Rite-Form Corset Co., Inc.*, 75 N. L. R. B. 174; *Tampa Transit Lines*, 83 N. L. R. B. 1017. To do this there must be a continuous policing of compliance from day to day, because a compliance status once achieved does not necessarily continue for any definite period of time.

Gaps in time between accounting and reporting, vacancies in union office, disparity between the dates of election of local and national union officers, and many other circumstances result in frequent lapses from compliance. Illustrative are the two tables set forth in Appendix II to this brief, taken from the records of the Affidavit Compliance Branch. Table I shows the number of unions in compliance and lapsing in compliance status from month to month for the year beginning July

1948. It shows that from month to month unions previously in compliance, ranging from a low of 2,925 to a high of 8,538, for one reason or another lapsed in their compliance status. As of January 31, 1949, and February 28, 1949, there were more unions which had fallen out of compliance than were actually in compliance. As of the last day in each of the seven months beginning with December, 1948, the number of unions previously in compliance which, for one reason or another, had lapsed in their compliance represent well over half of the total (and in January and February more than the total) unions which had been in compliance at the beginning of those respective months. Particularly illustrative of this general phenomenon is the breakdown of the compliance experience of nine individual unions—chosen purely at random—reflected in Table II. An examination of Table II discloses that each of the unions listed was out of compliance with Section 9 (h) for varying periods several times in the course of a year. Thus, one union (designated in the Table as Union D) lapsed in compliance status at five different times in one year, four unions lapsed four times during the same year, and the remainder three times during that year.

It is part of the normal work of the Affidavit Compliance Branch to notify unions in advance of the expiration dates of their reports and affidavits so that they may be seasonably

renewed. But as we have shown, the policing of compliance is not concentrated upon any one particular period in point of time. It is an all-year-round subject of inquiry, in which the branch of the Board vested with the policing function deals with day-to-day fluctuations in the status of many thousands of unions which have filed the numerous prescribed documents with it.

Now, if compliance determinations were litigable at all—and clearly, if objections to compliance could be raised as a bar to proceedings in unfair labor practice cases they could also be raised as a bar to proceedings in representation cases—there would have to be not one hearing, but several, to determine whether at each stage where compliance was necessary the union was actually in compliance. It is impossible to conceive that the Congress which took affirmative steps to assure that certifications would not be "tied up for months" by the necessity of making compliance determinations, would sanction any procedure such as this which could hold up certifications not merely for months but for years. The only way to avoid a result so incompatible with Congress' manifest objectives is to hold that the procedure for determining compliance is entirely separate and distinct from the procedure for resolving questions concerning representation and unfair labor practice charges, and that compliance determinations are not litigable

in representation or unfair labor practice proceedings.

Moreover, the Board has adopted the administrative policy of refusing to issue orders requiring employers to bargain collectively with unions which are not currently in compliance (*supra*, pp. 6–7). If compliance determinations could be challenged in unfair labor practice proceedings, the Board could be required after issuing the decision to reopen the record to permit the employer to adduce proof that at the time the Board's order issued the union was not in compliance. Indeed it might even be contended that compliance would have to be determined as of the date of a court order enforcing the Board's order. To permit litigation of compliance at all these stages would, as Judge Goodrich said of an analogous procedure, make a "merry-go-round of the Act." *National Labor Relations Board* v. *Condenser Corp.*, 128 F. 2d 67, 81 (C. A. 3).

D. *Congress did not intend, in Sections 9 (f), (g) and (h), to confer any benefits or rights on employers; hence an employer has no legal interest in questions of compliance which would entitle him to litigate such questions*

In what precedes we have sought to show that issues of compliance with Sections 9 (f), (g) and (h) were intended to be resolved administratively by the Board and the General Counsel

and were not intended to be the subject of litigation before the Board acting in its quasi-judicial capacity or in the courts. That conclusion as to the character of those issues is strongly reinforced by a consideration of the employer's lack of legal interest in issues relating to compliance by a charging union.

As we have pointed out (*supra*, pp. 34–38), the provisions of Sections 9 (f), (g) and (h) do not affect the employer's substantive obligations under the Act. They do not purport to immunize or to excuse conduct which would otherwise constitute an unfair labor practice. They do not preclude the Board from proceeding against such conduct upon a charge filed by someone other than a non-complying labor organization. They affect only the availability to the union of the opportunity to initiate proceedings by filing a petition or charge.

Thus the scheme of the Act demonstrates that Sections 9 (f), (g) and (h) were not designed to confer rights or benefits, either directly or indirectly, upon employers charged with unfair labor practices. Rather, the sole purpose of these provisions was to protect the interest of employees and of the public. The legislative history of the Act makes this clear. See H. Rep. No. 245, 80th Cong., 1st Sess., p. 33; 93 Cong. Rec. 3425, 3635, A–1911, 5110; Leg. Hist. 616, 800, 869, 1509.

Congress' intent to confer important benefits on employees is demonstrated in the statements of Representative Hartley, co-author of the Act, concerning the non-Communist provisions of Section 9 (h), and the requirement in Section 9 (f) which conditions access to the Board's facilities on a showing by the union that it has distributed copies of its financial statements to all its members. Representative Hartley stated that the provision for distribution of financial information conferred upon the union member the "right to know how much money his union has, how much it pays its officers, and how much of the union's money the officers use for their expenses." (93 Cong. Rec. 3425, Leg. Hist. 616). (See also the remarks of Representative Potts (93 Cong. Rec. 3635, Leg. Hist. 800); Representative Meade (93 Cong. Rec. A-1911, Leg. Hist. 869); Senator Kem (93 Cong. Rec. 5110, Leg. Hist. 1509); H. Rep. No. 245, 80th Cong., 1st Sess., p. 33)). He added that the non-Communist affidavit provision guaranteed to employees the "right of a union free of Communist domination and control" (93 Cong. Rec. 3425, Leg. Hist. 616). (See also remarks of Representative Case (93 Cong. Rec. 6283, Leg. Hist. 874); Senator McClellan (93 Cong. Rec. 4880, Leg. Hist. 1410); Senator McCarthy (93 Cong. Rec. 4882, Leg. Hist. 1414); H. Rep. No. 245, 80th Cong., 1st Sess., p. 38.)

Congress' intent to protect the public through the enactment of Section 9 (h) is expressed in

the remarks of Representative Mundt who, in discussing Section 9 (h), stated, "we are about to adopt some basic labor legislation to protect the public against excessive and unnecessary strikes" (93 Cong. Rec. 3629, Leg. Hist. 789). (See also the remarks of Representative Dondero, 93 Cong. Rec. 3633, Leg. Hist. 798.)

This intent is disclosed also in the preamble to the amended Act (61 Stat. 136, 29 U. S. C. Supp. III, 151):

> Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities *which impair the interest of the public* in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein granted. [Emphasis supplied.]

The strikes which Congress tried to avoid were political strikes. On the basis of evidence which had been introduced before congressional committees[32] Congress had concluded that if and

[32] One specific example brought to committee notice was the 1941 strike in the Milwaukee plant of the Allis-Chalmers Manufacturing Co., when that company was producing vital defense materials. It was testified that the strike was caused

when Communists secure positions of leadership in labor organizations, positions in which they control or influence the bargaining process, they are likely to call such strikes and thereby interfere with the continuous flow of interstate commerce. Congress therefore acted to oust Communists from such positions.

Congress relied upon union members themselves to accomplish this objective. In Section 9 (h), it provided an incentive and information which would enable them to do so. Thus, the function of the affidavit required of union officers was to inform union members as to which of their leaders were Communists. As Mr. Justice Jackson said in his concurring opinion in *American Communications Ass'n* v. *Douds*, 339 U. S. 382, 431:

> * * * hence the [Communists'] resentment of laws to compel disclosure of Communist Party ties. The membership is not likely to entrust its bargaining power, its records, and its treasury to such hands. When it does, the union finds itself a more or less helpless captive of the Communist Party. Its officers cease to be interested in correcting grievances but seek

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by Harold Cristoffel, "Communist Party member and president of the Allis-Chalmers local * * * pursuant to the decision * * * of the Communist Party". See Hearings before House Committee on Education and Labor on Bills to Amend and Repeal the National Labor Relations Act, 80th Cong., 1st Sess., pp. 3611–3615; *American Communications Ass'n* v. *Douds*, 339 U. S. 382, at p. 388.

> to worsen and exploit them; they care less for winning strikes than that they be long, bitter and disruptive.

The function served by denial of Board facilities to unions officered by non-signers of the affidavit was to provide an additional incentive for the ousting of Communist leaders by the union's membership. As this Court held in the *Douds* case, 339 U. S., at p. 393:

> * * * By exerting pressures on unions to deny office to Communists and others identified therein, § 9 (h) undoubtedly lessens the threat to interstate commerce * * *

The opinion of this Court in the *Douds* case, 339 U. S. 382, 396, 398, 399, 404, reflects the fact that in adopting Section 9 (h) Congress was concerned only with protecting the public interest and the interests of employees. Nowhere in the opinion is there any indication that this Court believed that Congress was concerned in this section with conferring rights or benefits upon employers. Indeed, the legislative history shows beyond doubt that enactment of these provisions did not stem from any concern for employer rights or interests. No supporter of the Act even suggested that these provisions would or should create special rights or benefits for employers.

It is true that one of the effects of the course which Congress took is that some employers oc-

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casionally may as a practical matter escape legal responsibility for unfair labor practices which they have committed. Thus, if the union members, contrary to the hope and expectation of Congress, should fail or refuse to oust Communist leaders, or if the union should fail to make the necessary financial disclosures to the Government and its members in accord with Section 9 (f), the Board will not issue a complaint against an employer on charges of unfair labor practices filed by that organization. But such an escape from legal responsibility is a wholly fortuitous consequence of the method chosen by Congress to achieve its objectives; it is a windfall, not a grant of legal rights to the employer by Congress.

Indeed, the employer's escape from legal responsibility for unfair labor practices, far from furthering the objectives of Congress, *pro tanto* impedes the effectuation of its over-all policies. For, to the extent that the employer frustrates his employees' collective bargaining rights, he creates the very conditions which the unfair labor practice provisions of the Act were designed to remedy, namely, conditions of industrial unrest which foster interruptions in the free flow of commerce.[33]

[33] This purpose is stated in the preamble and in Section 7 of the original Wagner Act which were retained substantially verbatim in the Labor Management Relations Act of 1947. The preamble, Section 1, reads in part:

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards

It follows that Congress did not choose to make employers its instrumentalities for effectuating the objectives of Section 9 (h). It did not seek to encourage unfair labor practices by employers as a means of putting pressure on union members to oust Communist leadership. It refused to modify the obligation of employers to refrain from such unfair labor practices as against non-complying labor organizations. It did not intend that a policeman so antagonistic to the broad objectives of the Act should share in the duty of enforcing it. Congress relied instead entirely upon the employees and the incentive which access to Board facilities to secure redress against illegal employer conduct provided. That incentive was placed in the care of the Board, not employers.

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commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees."

Section 7 reads:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

Under these circumstances we submit that an employer is without standing to assert that the charging union was not in compliance with Sections 9 (f), (g) or (h), as a defense to an unfair labor practice proceeding under Section 10, either before the Board or in the courts. In order to claim the protection of those provisions the employer must show that those sections themselves confer upon him some judicially enforceable legal right. It is well settled that mere interest in the proper enforcement of the laws gives one no right to call the construction or enforcement of a federal statute into judicial question. *Ex parte Levitt,* 302 U. S. 633; *Massachusetts* v. *Mellon,* 262 U. S. 447, 486-488; *Alabama Power Company* v. *Ickes,* 302 U. S. 464, 478; *Tennessee Power Company* v. *T. V. A.,* 306 U. S. 118, 135; *Singer & Sons* v. *Union Pacific R. Co.,* 311 U. S. 295, 303-304. And this is true even where the application of the statute has resulted in injury to the person complaining of it. Cases cited *supra.* As stated in *Stark* v. *Wickard,* 321 U. S. 288, 306:

> To reach the dignity of a legal right in the strict sense, it must appear from the nature and character of the legislation that Congress intended to create a statutory privilege protected by judicial remedies.

In a number of cases litigants have sought to claim the benefit of statutory provisions designed for the protection of a class of which they were

not members. In each case they attempted to distinguish their interest from the interest of the general public in the proper administration of the laws, claiming, in view of their special interest, that the statute conferred upon them a justiciable right. But the courts have held mere special interest not enough; they have refrained from passing upon the interpretation or application of statutory provisions unless the party relying upon them shows that he is one of the class in whose interest or for whose protection the particular provision was enacted.

The classic example is *Perkins* v. *Lukens Steel Company*, 310 U. S. 113. In that case certain firms, potential bidders for public contracts, sought to secure judicial review of a minimum wage determination by the Secretary of Labor affecting such contracts. They claimed that the Secretary's determination was based upon misconstruction and misapplication of the relevant statutory provisions, and showed that they were specially injured by it because the determination impaired their ability to compete for public contracts on equal terms with their competitors. Plaintiffs asserted that their right to compete on equal terms was recognized and protected by the statute which required that public contracts be let through competitive bidding, and that their claim of infringement of that right was therefore justiciable. The Court held, however, that the

statute upon which the plaintiffs relied was enacted for the benefit of the Government, not of potential bidders, and that therefore, despite the special interest of the plaintiffs as potential bidders, and despite the injury which they might sustain as a result of the Secretary's wage determination, they had no right to challenge the Secretary's construction and application of the minimum wage provisions in the courts.[34] The Court said (310 U. S., at pp. 125–126):

> Respondents, to have standing in court, must show an injury or threat to a particular right of their own, as distinguished from the public's interest in the administration of the law. They claim a standing by asserting that they have particular rights under and even apart from statute to bid and negotiate for Government contracts free from compliance with the determination made by the Secretary of Labor for their industry. Respondents point to § 3709 of the Revised Statutes and to the Public Contracts Act itself.
>
> Section 3709 of the Revised Statutes requires for the Government's benefit that its contracts be made after public advertising. It was not enacted for the protection of sellers and confers no enforceable rights upon prospective bidders. "The United States needs the protection of publicity, form, regularity of returns and affidavit

[34] See the discussion of the *Perkins* case in *Oklahoma* v. *Civil Service Commission*, 330 U. S. 127, 139.

> (Revised Stats., §§ 3709, 3718–3724, 3745–3747), in order to prevent possible frauds upon it by others. A private person needs no such protection against a written undertaking signed by himself. The duty is imposed upon the officers of the Government and not upon him." That duty is owing to the Government and to no one else.

Like the duty imposed upon officers of the Government in Section 3709 of the Revised Statutes, to let contracts only after public bidding, the duty of issuing complaints on charges filed by labor organizations only if the organizations have complied with Sections 9 (f), (g) and (h) of the National Labor Relations Act was imposed upon the Board and the General Counsel, not upon employers. "That duty is owing to the Government and to no one else." As in that case, so here the Board's and the General Counsel's "responsibility is to superior executive and legislative authority. Respondents have no standing in court to enforce that responsibility or to represent the public's interest in the [Board's] compliance with the Act" (310 U. S. at 129).[35]

[35] Related principles resulted in dismissal of the plaintiff's suit in *Exner* v. *Sherman Power Construction Co.*, 54 F. 2d 510 (C. A. 2). There plaintiff's dwelling was injured by an explosion of dynamite, and he brought suit under a Vermont statute, Rev. Laws (1880) § 4323, Vt. Stat. (Rev. 1947) § 8590, which prohibited the storing of dynamite within fifty rods of an inhabited dwelling. Holding that because plaintiff's dwelling was situated more than fifty rods from

This principle applies equally to defendants who seek to invoke statutory provisions enacted for the benefit and protection of others as a bar to the maintenance of suit against them. Illustrative is *Grossman* v. *Young,* 72 F. Supp. 375 (S. D. N. Y.). In that case a minority stockholder brought suit under Section 16 (b) of the Securities and Exchange Act, 48 Stat. 881, 15 U. S. C. § 78p (b), which confers upon corporations the right to recover profits made in certain circumstances by their officers and large stockholders. Minority stockholders are authorized to bring action for the recovery of such profits in behalf of the corporation, but they must first demand in writing that the corporation itself sue, and wait sixty days thereafter before filing

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the place where the dynamite was stored, the plaintiff could not rely upon the statute, the court, speaking through Judge Learned Hand, said (54 F. 2d, at p. 512):

"* * * It is impossible to see how the plaintiffs were of the class intended to be benefited by a law forbidding storage of dynamite within an area in which they were not included. It is true that the act contained a provision for fines for continued violation, after notice from an inhabitant of the town to remove the dynamite. But that clause was intended only to afford ample means for informing the storer of the dynamite of his violation of law and to enable inhabitants of the town outside for forbidden area, even busybodies, to benefit those within it by setting penalties in motion. We see no reason to suppose that a general interest in having laws observed or in helping people within the zone extended the protection of the statute to all inhabitants of the town. The plaintiffs were not of the class to be benefited. Any reasoning which would embrace them would be applicable even if they had lived in a corner of the town five miles away."

their complaint. The statute contains a two-year period of limitations. In the *Grossman* case the minority stockholder served his written demand on the corporation less than 60 days before expiration of the two-year period, and filed his complaint without waiting the full sixty days. Relying upon this failure of the plaintiff to satisfy the statutory requirement, the defendant, an officer of the corporation, moved to dismiss. Judge Rifkind rejected the defense, holding that the sixty-day waiting provision was intended for the benefit of the corporation, to enable it to bring suit if it chose, not for the benefit of wrongdoing corporate officers, and that consequently the defendant officers could not claim benefit from the plaintiff's failure to comply. Accord: *Benisch* v. *Cameron*, 81 F. Supp. 883 (S. D. N. Y.).

Similarly, in *Gange Lumber Co.* v. *Rowley*, 326 U. S. 295, this Court held that an employer was without standing to raise constitutional objections to a provision of a state statute which enlarged the time within which an employee could apply to the State Department of Labor and Industries for allowance of additional workmen's compensation. The employer pointed out that at the time of enactment of the statute the original award to the employee had become "final" in the sense that any subsequent application by the employee for additional compensation was barred.

Thus the statute operated to revive a right on behalf of the employee which had expired and the exercise of which might adversely affect the employer by increasing the rate of insurance which he would be required to pay in the future. As one basis for rejecting this contention, the Court pointed out that the Department of Labor had always had power to grant additional compensation on its own motion and that the employer had, accordingly, always been liable to the entry of an additional award which might affect his insurance rates. Thus, the Court said (p. 307) that the employer—

> * * * has succeeded only in showing that one mode provided by the preexisting law for bringing the liability into play had been terminated. It was this and only this which the 1941 amendment revived. At the most, therefore, appellant's injury, if it were otherwise more substantial, would consist in the restoration of an alternative, if also possibly a more effective, method for putting in motion the machinery provided for making an award.

These principles are directly applicable here. In the *Grossman* case, as in the instant case, the consequence of holding the defense of alleged noncompliance with procedural provisions unavailable to the defendant was to subject him to the possibility of a judgment or order which might not otherwise have been issued against him.

But in this case, as in that one, that consequence is not sufficient to establish that the procedural provision upon which the defendant relied was enacted for his benefit or protection. Cf. *Gange Lumber Co.* v. *Rowley, supra.* And when it appears, as it does here, that the particular provision was not enacted for the benefit of the defendant, contentions of the defendant predicated upon it may not be entertained by the courts.

As we have seen, there is no basis for assuming that Congress' instructions to the General Counsel not to issue complaints where the charging union failed to comply, were intended to vest in employers a right to enforce this provision against the Board or the General Counsel. On the contrary, the legislative history shows that Congress selected the method of withholding Board facilities from non-complying unions for the sole reason that it considered the holding out of such benefits an effective inducement to compliance. Indeed, the disability of non-complying unions initially, under the House bill, attached only to certifications; it was extended to issuance of complaints on unfair labor practice charges only because Congress wanted to condition all benefits under the Act upon compliance (see pp. 45–47, *supra*). As Congress conceived it, therefore, the question involved in administering Sections 9 (f), (g) and (h), was whether labor organizations had satisfied conditions which gave

them standing to seek certain benefits from the government, not at all whether by proceeding on a charge filed by a labor organization the General Counsel was depriving the employer of any right. To hold that an employer had thereby acquired rights which he could litigate in an effort to evade liability for his wrongful acts would be to assume that Congress elevated the incidental impact of compliance determinations upon the employer to a plane far higher than the intended and direct impact of compliance determinations upon the labor organizations. The results of such a holding upon administration of the Act, as we have shown, would be disastrous. It should clearly be avoided if a contrary determination is possible, and we have shown that it is not only possible but indicated.

II

THE BOARD PROPERLY FOUND THAT THE FILING OF AFFIDAVITS BY THE OFFICERS OF THE CHARGING INTERNATIONAL UNION IN THIS CASE SATISFIED IN FULL THE REQUIREMENTS OF SECTION 9 (h), AND THAT ITS COMPLIANCE STATUS DID NOT TURN ON WHETHER OFFICERS OF THE C. I. O., WITH WHICH THE CHARGING UNION WAS AFFILIATED, ALSO FILED THE AFFIDAVITS

When, on August 22, 1947, Section 9 (h) became effective, "each officer" of a petitioning or charging "labor organization *and the officers of any national or international labor organization of which it is an affiliate or constituent unit*" were required to file a non-Communist affidavit before an investigation of the labor organization's

petition could be conducted or a complaint issued based upon its charge. Soon after the effective date of the Act numerous labor organizations took steps to come into compliance. The officers of local unions filed affidavits, and the officers of national or international unions with which these locals were affiliated also filed.

Almost at once disagreement developed between the former General Counsel and the Board on the question whether, in cases where the national or international labor organization was in turn affiliated with a federation, filing of affidavits by the officers of the local and the national or international was sufficient to bring the local into compliance with the statutory requirement. The former General Counsel's ruling that in such cases the locals would not be considered in compliance unless the officers of the federation also filed affidavits and the Board's reversal of that ruling in the *Northern Virginia Broadcasters* case, 75 N. L. R. B. 11, became a *cause célèbre,* not only in labor circles, but in the public press. Several factors combined to bring the issue to the attention of Congress.

The rulings of the former General Counsel and the Board on this matter were the first involving a major question of interpretation and construction of the 1947 amendments. Congressional interest in these amendments, and their construction and application by the former General Counsel and the Board, was then, of course, at

high pitch. Congress had manifested that interest by providing in the Act itself for the establishment of a so-called "watchdog" committee to investigate and report to Congress on the functioning of the Act (Section 401). This question was of more than ordinary concern to the Committee and to Congress, not only because of its novelty, but also because it involved the danger that a boycott of the Board, which had from the beginning been urged by some union leaders who opposed the Taft-Hartley Act generally, and Section 9 (h) in particular, could effectively be accomplished. As long as major unions which were willing to comply were able to do so, and thereby obtain the benefits of the Act, the danger of a successful boycott of the Board by recalcitrant unions was not great. The competitive disadvantage which recalcitrant unions would suffer could be relied upon to induce them to comply.

But the former General Counsel's ruling destroyed the pressure to comply. Officers of the largest national and international unions are, by virtue of their office, also officers of the major federations, the A. F. L. and C. I. O. Under the former General Counsel's ruling, the failure of one such international to comply made futile the compliance intentions of any other national or international union in the same federation and the threat of competitive disadvantage to recalcitrant unions vanished. Unions which de-

sired to comply were made, in effect, involuntary parties to the boycott. And since most major national and international labor organizations are affiliated with one of the national federations, virtually no cases could be processed by the Board. Had all the unions deliberately boycotted the Board the result could hardly have been more effective.

Consequently, when the Board's decision in the *Northern Virginia Broadcasters* case was announced, it was immediately hailed by Senator Taft, one of the authors of the Act, as one that would lead to general acceptance of the non-Communist provision,[36] and as "certainly not in conflict with the intention of Congress."[37]

When the Joint Committee on Labor Management Relations submitted its initial report to Congress on March 15, 1948, it treated in detail the Board's decision in the *Northern Virginia* case, S. Rep. No. 986, 80th Cong., 2nd Sess., Pt. 1, pp. 10–12. Virtually at the outset of its discussion of "The Non-Communist Affidavit" the Committee said:

> Despite the protests by many labor leaders and officials against the act and against the filing requirements accom-

[36] New York Herald Tribune, October 8, 1947, p. 18, column 5.

[37] New York Times, October 8, 1947, p. 6, column 3, quoted in *West Texas Utilities Co.* v. *National Labor Relations Board*, 184 F. 2d 233, 235–236, n. 8 (C. A. D. C.).

> panied by a threat of concerted refusal to file affidavits and registration statements, it is to be noted that no such boycott of the National Labor Relations Board and of the procedures of the act has ensued. * * * In many instances, unions have taken decisive action to compel reluctant officers to comply with the filing requirements.

After noting that "officers of a large majority of labor organizations have complied with the filing requirements," and setting forth the pertinent statistics contained in Board reports, the Committee expressed its "hopes that within the very near future all labor organizations in the United States will be persuaded of the benefits which the procedures under the Taft-Hartley Act hold out for them and will take the necessary steps to avail themselves of the benefits and peaceful procedures offered by the law."

The report then turned to consideration of the General Counsel's ruling that "these affidavits must be made by officers of the parent federations, the A. F. L. and the C. I. O., as well as by the officers of national or international unions and their locals, if the locals were to avail themselves of the protections of the act." The Committee commented that:

> The ruling aroused widespread comment and speculation because of the refusals of John L. Lewis, then an officer and vice

president of the A. F. L., and of officers of the C. I. O. to file the affidavits. On October 7, 1947, the Board, in its first ruling on the applicability of the affidavit and registration requirements, held that where the local union involved and the national or international labor organizations to which it is directly affiliated had complied, the local union was in full compliance whether or not the parent A. F. L. or C. I. O. had met the requirements.

After setting forth the facts of the *Northern Virginia* case, the Committee summarized the opinion of the majority of the Board as follows:

> The majority opinion noted that, under the regional director's ruling, if any single officer of the A. F. L. failed to comply, "not a single complying local or international union within that federation can derive any benefit from its own clean hands." The decision observed that to prohibit complying locals and complying national unions from invoking the jurisdiction of the Board for the reason that officers of the parent federation had failed to comply would detract from the fundamental purpose of this provision "to eliminate Communist influence from the labor movement of the United States." The majority also based its conclusion upon the meaning of the phrase "national or international labor organization" contained in section 9 (g) (h) of the act, stating that in ordinary labor parlance the term refers

> to labor organizations such as the International Brotherhood of Electrical Workers, rather than to parent federations such as the A. F. L. or the C. I. O.

The report did not even refer to the arguments advanced in the opinion of the dissenting Board member.

In its concluding observations, p. 33, referring generally to the Board's administration of the Act, as amended, the Committee said it "believes both the announced policies, and the actions taken, demonstrate that the act is being well administered." Under the title "Need for Amendments" (p. 34), the Committee, referring to "the situations to which various provisions of the new law have been applied," said, *"In each instance the law has adequately provided a remedy for the abuse which Congress sought to correct."* [Italics added.]

The Joint Committee again manifested its approval of the Board's construction in its second report to Congress. S. Rep. No. 986, 80th Cong., 2d Sess., Pt. 3, pp. 36–37. In that report the Committee again discussed the Board's decision in the *Northern Virginia* case, as well as other problems which had arisen in connection with the construction and administration of Section 9 (h). While the Committee made a number of criticisms and suggested various amendments to Section 9 (h), it voiced no criticism or objection to the Board's construction of the term

"national or international labor organization," and made no suggestion that the Act be amended to require officers of the federations to file affidavits, although at the time it made this report some officers of the C. I. O. had still not filed.

In approaching the question whether the Board's interpretation of Section 9 (h) effectuates the policies and objectives of Congress, it should be kept in mind, we think, that that interpretation has been subject to scrutiny by Congress itself. The Joint Committee had been charged by the Act itself with the duty of studying the Board's interpretation and administration of the Act (Secs. 402–403). In a statement to the Senate urging passage of the bill over the President's veto, Senator Ives of New York, one of the Managers on the Part of the Senate, who subsequently served on the Joint Committee, had pointed to the important role that the Joint Committee would play in assuring that the Act was administered in accordance with the intention of Congress (93 Cong. Rec. 7530–7531, Leg. Hist. 1641–1642. He had indicated (*ibid.*), that it would be the Joint Committee's responsibility to make sure that "there is no sabotage in the administration of the law"; "to prepare appropriate amendments and to see that these amendments are offered and properly supported at the next session of the Congress"; and "to help formulate administrative policy and procedure as

well as perform its functions as a strictly legislative agency at the inception of the new law." See also 93 Cong. Rec. 7527, 7533, Leg. Hist. 1636, 1646. Every member of the Joint Committee had been a member of either the House or the Senate Committee which reported the bills from which the Act ultimately emerged. Moreover, every member of the Conference Committee which was responsible for the final draft of the bill served on the Joint Committee.

Under these circumstances, the Joint Committee's approval, given within eight and eighteen months, respectively, after the effective date of the Act (cf. *Sioux Tribe* v. *United States,* 316 U. S. 317, 329–330), coupled with the absence of any attempt to amend the law so as to require officers of federations to file affidavits, seems to us, as it did to the Court of Appeals for the District of Columbia Circuit and the Sixth Circuit, clear evidence of "congressional acceptance" and adoption of the Board's view. *West Texas Utilities Co.* v. *National Labor Relations Board,* 184 F. 2d 233, 235, n. 8; *National Labor Relations Board* v. *Wiltsie,* Appendix III, *infra*; cf. *Herzog* v. *Parsons,* 181 F. 2d 781, 788 (C. A. D. C.), certiorari denied, 340 U. S. 810; *Costanzo* v. *Tillinghast,* 287 U. S. 341, 345; *Norwegian Nitrogen Co.* v. *United States,* 288 U. S. 294, 313–315; *Boehm* v. *Commissioner,* 326 U. S. 287, 291–292.

A. *The term "national or international labor organization" does not apply to a federation of autonomous national and international labor organizations*

The juxtaposition of the terms "labor organization" and "national or international labor organization of which it is an affiliate or constituent unit" in Sections 9 (f), (g) and (h) establishes that in the latter category Congress included those organizations which, *in relation to* the petitioning or charging labor organization, occupy the position of a "national or international labor organization." Congress clearly desired to reach union officers at two organizational levels, *i. e.,* officers of the labor organization which filed the charge or petition (usually a local union), and officers of any organization which stood in relation to it as a "national or international labor organization." Since Congress imposed the disability upon the petitioning or charging union, it is clear that the status of any organization with which it is affiliated as a "national or international labor organization" must be determined from the point of view of the petitioning or charging union. Thus, whether the officers of an organization with which the petitioning or charging union is affiliated must file affidavits and financial information in any particular case depends on whether that organization acts, in relation to the particular petitioning or charging union, as a "national or international labor organization."

1. *The definition of "labor organization" in Section 2 (5) of the Act supports the Board's view that, in relation to member national and international organizations, a federation is not itself a "national or international labor organization"*

It is true that Congress did not define in the Act the elements of the relationship between two organizations which are necessary to establish that one stands, *vis-a-vis* the other, in the role of "national or international." But that difficulty is largely overcome by reference to the statutory definition of "labor organization" in Section 2 (5) of the Act, a definition which was carried over verbatim from the Wagner Act. Section 2 (5) defines as a labor organization:

> * * * any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

This definition, though not originally designed for the purposes of Sections 9 (f), (g) and (h),[38] may be taken to reflect the view of Congress as to the elements indispensable to the treatment of an organization as a labor organization, and con-

[38] The definition was originally drawn broadly for the purpose of effectuating to the fullest extent the organizational freedom of employees which Congress protected in Sections 7, 8 (1), and 8 (2) of the Wagner Act. Congress was then concerned, for example, to eradicate company domination

sequently, as to the elements indispensable to the treatment of an organization, in its relations with another labor organization, as a "national or international labor organization." Local unions, like Local Union No. 1215, of the International Brotherhood of Electrical Workers, involved in the *Northern Virginia* case, are, of course, labor organizations within this definition. The vast bulk of petitions and charges filed with the Board are filed by such local unions, and their officers would therefore be required to file affidavits. Where local unions which file petitions and charges are affiliated with a national or international union, as was true in the *Northern Virginia* case, the officers of the national or international would also have to file, since such national or international unions exist "for the purpose in whole or in part, of dealing with employers" on behalf of their affiliated or constituent locals.

But where, in such a case, the national or international union is in turn affiliated with a national federation of unions, the officers of the federation would not be required to file, because, in its relationship to the local and to the international, the

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of employee representation plans, company unions, and all other employer-controlled bargaining devices, whether formally organized or not. See S. Rep. No. 573, 74th Cong., 1st Sess., p. 7; see also, *National Labor Relations Board* v. *James H. Matthews & Co.*, 156 F. 2d 706, 707–708 (C. A. 3); cf. *National Labor Relations Board* v. *Kennametal, Inc.*, 182 F. 2d 817 (C. A. 3).

federation is clearly not a "labor organization" within the definition of Section 2 (5). This is true for two reasons. The first is that bargaining with employers is carried on by the national and international unions and their affiliated or constituent locals, not by federations on their behalf. Indeed, as we shall show, *infra*, pp. 119–123, the national and international unions which comprise the federations are autonomous bodies and the federations are powerless to intervene in negotiations between such unions and employers. Thus, in relation to its affiliated national and international unions, and their locals, the federations do not exist "in whole or in part," for the purpose of "dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." The second is that employees who are members of locals and national or international unions are not even members of the federations and do not, as employees, "participate" in the affairs of the federations. The A. F. L. "is essentially a federation of unions and not of individual members. It is a union of unions."[39] And the C. I. O. Constitution, Article III, Section I, shows that it is composed of "affiliated national and international unions, organizing committees, local industrial unions and industrial union councils," not employees.

[39] Taylor, Albion, J., *Labor Problems and Labor Law* (Prentice Hall, Inc., 1938), p. 69.

This is not to say, of course, that in no circumstances may federations such as the A. F. L. or the C. I. O. be deemed labor organizations within the definition contained in Section 2 (5), or that these federations never occupy the position of "national or international labor organization" in relation to other labor organizations. Both the A. F. L. and the C. I. O. engage in organizational efforts among unorganized employees in fields to which the jurisdiction of national or international unions within the respective federations does not extend. In these fields the A. F. L. and the C. I. O. charter local unions which are affiliated directly with the federation.[39a] The federations engage in collective bargaining with employers on behalf of these directly affiliated locals, and sometimes in their own name file petitions or charges with the Board on their behalf.[40] Constitution of the American Federation of Labor, Article XIII, Secs. 2, 3;

[39a] "These local trade and federal labor unions must be sharply distinguished from the local unions of the national unions affiliated with the federation; the federation has practically nothing to do, directly, with the latter local unions." McCabe, David A. and Lester, Richard A., *Labor and Social Organization* (Little, Brown and Co., 1938), pp. 47–48; see also, Faulkner, Harold U., and Starr, Mark, *Labor in America* (Harper & Bros., 1944), p. 111.

[40] See *e. g.*, *Hanson Clutch & Machinery Company*, 70 N. L. R. B. 1021 (A. F. L.); *The Houston Press Company*, 70 N. L. R. B. 660 (C. I. O.); *Albemarle Paper Mfg. Co.*, 70 N. L. R. B. 153 (C. I. O.); *Volney Felt Mills, Inc.*, 70 N. L. R. B. 908.

Constitution of the Congress of Industrial Organizations, Article III, Sections 3, 4; Article VI, Section 1; Article VII, Section 5. This is "a transitional arrangement," pending the establishment of internationals.[40a] Article III, Section 3, of the Constitution of the C. I. O., for example, provides that "it shall be the duty of the Executive Board to combine local industrial unions into national or international unions or organizing committees."[40b] Nevertheless, while such a relationship exists, and in respect to it, the federations are clearly acting as "labor organizations" within the meaning of Section 2 (5), and the Board has so held. (See p. 16, note 27, *supra*.) In its Thirteenth Annual Report to Congress (Gov't Print. Off., 1949, p. 24), the Board stated:

> * * * the A. F. L. or the C. I. O. may be subject to the filing requirements of

[40a] McCabe & Lester, op. cit. *supra*, note 39a, at p. 95.

[40b] Compare, Article IX, Section 3, Constitution of the American Federation of Labor: "The Executive Council shall use every possible means to organize new National or International Trade or Labor Unions, and to organize Local Trade and Federal Labor Unions and connect them with the Federation until such time as there is a sufficient number to form a National or International Union, when it shall be the duty of the President of the Federation to see that such organization is formed." Section 4 provides further: "When a National or International Union has been formed, the President shall notify all Local Unions of that Trade to affiliate with such National or International Union, and unless said notification be complied with, within three months, their charters shall be revoked."

> the act when, in a particular situation it exists for the purpose of dealing with an employer in collective bargaining and it seeks recognition for such purpose, or when it organizes and grants charters to directly affiliated local and Federal labor unions, and there is no intervening national or international union with which the local is affiliated.*

It is clear, therefore, that judged by the definition in Section 2 (5), federations like the A. F. L. and the C. I. O. constitute labor organizations in relation to the locals directly affiliated with them but do not constitute labor organizations in relation to autonomous international unions and their locals. Thus, applying the statutory definition, when the A. F. L. or C. I. O. themselves file charges or petitions with the Board they may be found to be labor organizations for the purposes of Sections 9 (f), (g) and (h). And, when petitions or charges are filed by locals affiliated directly with a federation, the federation may be held to constitute a "national * * * labor organization." But, when a petition or charge is filed by a local union affiliated directly with an international union, or by an international union

* *Matter of S. W. Evans & Son* (75 N. L. R. B. 811); see also Board Member Murdock's special concurrence in *Matter of Northern Virginia Broadcasters, Inc., Radio Station WARL, supra, and Matter of Schenley Distilleries, Old Quaker Division* (77 N. L. R. B. 468), as to the relationship between a Federal labor union and the A. F. L.

itself, the federation with which the international is in turn affiliated may not be held to constitute a "labor organization" within the meaning of Section 2 (5), and consequently may not be held a "national or international labor organization" whose officers are required to file affidavits as a condition precedent to the grant of the Board's facilities to the local or international union.

In its opinion in *National Labor Relations Board* v. *Postex Cotton Mills, Inc.*, 181 F. 2d 919, 921, the Court of Appeals for the Fifth Circuit held that "The statutory terms may not be properly defined upon the basis of the capacity in which the labor organization acts in a particular instance." With due deference, we submit the contrary is true. For example, under the original Act, a foreman was an "employee" or an "employer" depending "upon the basis of the capacity in which [he] acts in a particular instance." See *Packard Motor Car Co.* v. *National Labor Relations Board*, 330 U. S. 485, 488–490. Similarly, the Court of Appeals for the District of Columbia Circuit has been held to be a legislative or a judicial body, depending "upon the basis of the capacity in which [the Court] acts in a particular instance." See *Keller* v. *Potomac Electric Co.*, 261 U. S. 428, 442–444.

To hold that applicability of the term "national or international labor organization" cannot be made to turn in each instance upon the basis of

the capacity in which the organization involved acts, would lead to the conclusion that the federations never fall within the term, for the vast proportion of the activities of the federations are concerned with the international unions which are their members, not with the relatively unimportant directly affiliated locals. On an all-or-none basis, unless the tail were permitted to wag the dog, federations would thus be excluded entirely. Indeed, the relationship of a federation with its national and international affiliates bulks so large in the whole that its relationship with locals and organizing committees which it charters directly is sometimes overlooked. The characteristic feature of a federation, which distinguishes it from a national or international union, is precisely its relationships with such national or international unions. It is for this reason, as we shall now show, that the term "national or international labor organization" has come to have a clear and well-defined meaning in the labor relations field, a meaning which clearly excludes federations from its scope.

2. *The term "national or international labor organization" has a well-defined meaning in labor relations parlance. Congress must be presumed to have intended that meaning to attach to its use of the term*

Unlike the broad term "labor organization," the limited term "national or international labor organization" is not defined in the statute. But,

as Congress must have known, these words are a term of art in the labor relations field. "Congress will be presumed to have used a word in its usual and well-settled sense." *United States* v. *Stewart,* 311 U. S. 60, 63; see also *Deputy* v. *du Pont,* 308 U. S. 488, 498; *Old Colony R. Co.* v. *Commissioner,* 284 U. S. 552, 560. As the Board pointed out in the *Northern Virginia* case, 75 N. L. R. B., at p. 14:

> In the absence of clear expression of legislative intent to the contrary, Congress, when legislating on a specialized subject, is deemed to have used words in the sense in which they are commonly understood by those who deal daily with that subject.

Literature in the field of labor economics is so replete with references to and recognition of the distinction between a "national or international labor organization" on the one hand, and a federation of national and international labor organizations on the other, as to place beyond question the Board's conclusion that to anyone familiar with the field, the term "national or international labor organization" has a definite connotation, and excludes federations. In 1947, for example, the Industrial Relations Branch of the Bureau of Labor Statistics, United States Department of Labor, published a study prepared by John M. Brumm, entitled "Brief History of the American Labor Movement." To his first reference to "national and international unions"

(p. 4), the author appended the following footnote:

> Unions called themselves "internationals" when some of the affiliated locals were outside the United States, usually in Canada. Today the terms "national unions" and "international unions" are used interchangeably to designate the larger *organizations* to which local unions in a craft or industry are affiliated. [Italics added.]

P. H. Casselman, in *Labor Dictionary* (Philosophical Library, New York, 1949), p. 211, defining "international union," says:

> In America the term refers to *labor organizations*, made up of local unions operating in the United States and Canada and sometimes Mexico. [Italics added.]

Another official publication, *Handbook of American Trade Unions*, U. S. Department of Labor, Bureau of Labor Statistics, Bull. No. 618 (1936 ed.), p. 49, declares that:

> Structurally the American Federation of Labor continues to be what it was at its inception—a federation of autonomous *national and international organizations* of workers in various crafts, trades and industries. [Italics added.]

The following quotations are also illustrative: Clyde E. Dankert, *Contemporary Unionism* (Prentice-Hall, Inc., 1948), pp. 56, 104:

> The American Federation of Labor is a *federation*. It is a group of unions banded

together for the purpose of achieving certain purposes, but it is a group in which the chief members retain virtually complete control over their own affairs.

* * * * *

As in the A. F. of L. the most important units in the C. I. O. are the nationals and internationals.

John A. Fitch, *The Causes of Industrial Unrest* (Harper & Brothers, 1924), p. 99:

> The [A. F. L.], as the name implies, is a federation of the national and international unions. It has no power over the affiliated bodies except the power of expulsion. * * * So far as the Federation is concerned, each affiliated union is supreme in its own field. The doctrine of trade autonomy is a basic one with the American Federation of Labor.

Albion G. Taylor, *Labor Problems and Labor Law* (Prentice-Hall, Inc., 1938), pp. 69–70:

> The *national* or *international* union is a federation composed of locals in a given craft or industry in the United States, sometimes including those in Canada and Mexico. The constituent "nationals" of the American Federation of Labor are powerful, sovereign bodies, creating locals by charter at will, and revoking them likewise, reserving the power to suspend or otherwise discipline locals, calling strikes, and bargaining. They are the independent

groups of which the American Federation of Labor is but a confederation or alliance.

Lloyd G. Reynolds, *Labor Economics and Labor Relations* (Prentice-Hall, Inc., 1949), p. 143:

> The national unions are not members of the A. F. L. or C. I. O. in the sense that Minnesota is a part of the United States. Their position is similar to that part of individual countries within the United Nations. The A. F. L. or C. I. O. executive council corresponds roughly to the U. N. Security Council. Each major union has a veto power and can prevent any action adverse to its interests. It is a serious problem for the labor federations, as it is for the U. N., to find useful activities which will not break up the organization by causing internal strife among the members.

Florence Peterson, *American Labor Unions* (Harper and Brothers, 1945), p. 57:

> The International unions are the autonomous, self-governing units of the labor movement.

David A. McCabe & Richard A. Lester, *Labor and Social Organization* (Little, Brown and Co., 1938), p. 46:

> The Federation is not a primary labor organization; it is the creature of the national trade unions, established to secure that degree of community of action that can safely be combined with autonomy for each national union in trade policies, collective bargaining and strikes.

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Philip Taft, *Economics and Problems of Labor* (Stackpole Sons, 1942), pp. 494–495:

> The most important unit in the American Labor Movement—both A. F. of L. and C. I. O.—is the national or international union. An international Union is so designated because it frequently has locals in Canada and in Mexico. It is the unit of structure and of government; and it is the body that controls the jurisdiction * * *. It should be remembered that the international is made up of locals which are its constituent and subordinate elements. The structure of the international union is usually determined by a number of conditions, such as time of organization, leadership, changing processes, and needs for adjustment to technological change. International unions regardless of their affiliation or nonaffiliation with other central bodies, are the dominant groups in the American Labor movement.

Jack Barbash, *Labor Unions in Action* (Harper and Bros., 1948), pp. 28–29:

> The meaningful story of the American Labor movement is essentially the story of the international unions. The international union on the whole is a self-contained unit. Without the international unions, the federations have no meaning and not much substance. The reverse is not true. The international unions can

and have functioned without affiliation to the federations.

Scott, Clothier, Spriegel, *Personnel Management*, 4th Edition (McGraw-Hill Book Co., 1949), pp. 543–544:

> The A. F. L. is a relatively loose federation of national unions. * * *
>
> The loose federation gives the A. F. L. relatively little control over its member international unions. This is particularly true when the international is large enough and strong enough to go its way alone.

Carroll Daugherty, *Labor Problems in American Industry*, 5th Edition (Houghton, Mifflin Co., 1941), p. 371:

> At the end of 1940, the structure of the C. I. O. was not dissimilar to that of the A. F. L. The backbone of the organization, as with the A. F. L., was made up of the loosely federated national unions.

It is also recognized that federations such as the A. F. L. and C. I. O. can be analogized to "national and international labor organizations" only insofar as their relations with directly affiliated locals and organizing committees is involved. For example, Millis and Montgomery, in *Organized Labor* (McGraw-Hill, 1945), p. 308, note 2, state: "The A. F. of L. serves as an international for the [directly] affiliated local and federal labor unions." McCabe & Lester, *op. cit., supra*, pp. 95, 103, point out

at p. 48, that "The Federation stands somewhat in the relation of a national union, for the time being, to the local trade and federal labor unions."

Based upon its own knowledge and experience, and its familiarity with the sources quoted above, the Board observed in the *Northern Virginia* case (75 N. L. R. B., at pp. 13–14):

> * * * In ordinary labor relations parlance these words have a definite, and almost technical, meaning. They refer to labor organizations such as the I. B. E. W. in this case, an "international" union. Most of the "national" and "international" unions which are the dominant groups in the American labor movement, are affiliated with either the A. F. L. or the C. I. O. * * *
>
> We are familiar with no use of the term "national or international labor organization" which includes parent federations such as the A. F. L. or the C. I. O. within its meaning. On the contrary, every definition or description of the structure of these two federations clearly indicates that the A. F. L. and the C. I. O. are different from "national" or "international" labor organizations. Thus, the United States Department of Labor declares that "structurally the American Federation of Labor continues to be what it was at its inception—a federation of autonomous national and international organizations of workers in various crafts, trades and industries." And a noted student of the history and

> structure of American trade unionism describes the A. F. L. as "a federation of independent autonomous, international unions, each having its own traditions and its own internal government. Each international union exercises the right to determine in accordance with its own needs, its dues, policies and program." [Footnotes omitted.]

Thus, when Congress used the term "national or international labor organization" in Sections 9 (f), (g) and (h), it must be presumed to have known that to those who were to administer the statute the words would be taken as referring normally to national and international unions and not to federations, except insofar as a federation, in any particular case, served "as an international" for labor organizations affiliated directly with it.[41] This is particularly so since, as the Board observed (75 N. L. R. B., at p. 14), and

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[41] In its opinion in the *Postex* case, 181 F. 2d 919, 920, the Court of Appeals for the Fifth Circuit suggested that the force of this argument "is considerably weakened by the observation that these writers refer to the relationship of national and international *unions* to the American Federation of Labor or the Congress of Industrial Organizations, not to national or international *organizations*, as does the statute." We are compelled to differ with this "observation." The very quotations set out in the text (see particularly the italicized quotations at p. 101) show that the writers used the terms "unions" and "organizations," or "labor organizations," interchangeably in this connection, as does the public generally, and as this Court did in *American Communications Association* v. *Douds*, 339 U. S. 382. "It seems more reasonable to us that 'organization' was used [in the

as we shall now demonstrate, "the legislative history of the new statute does not show Congressional intent to give a different meaning to these words."

3. *The legislative history tends to show that Congress used the term "national or international labor organization" in its usual labor relations sense*

Neither in the Committee Reports on the bill, nor in the course of debate, did the sponsors or opponents of the bill deal explicitly with the question whether officers of the major federations should be required to file affidavits as a condition precedent to the use of Board facilities by affiliated nationals or internationals and their locals. At one point Senator Taft indicated that he was under the impression that under the predecessor House bill the Board would have been required to "investigate the character of all the local and national officers as well as the character of the officers of the parent body or federation" (93 Cong. Rec. 6445, Leg. Hist., p. 1542). But, as the Court of Appeals for the District of Columbia Circuit pointed out in the *West Texas case,* 184 F. 2d, at 237–238:

> * * * the House bill which was the forerunner of 9 (h) forbade certification

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Act] instead of 'union' merely because not all bodies popularly known as unions are such by name. They are variously labelled union, brotherhood, association, guild, alliance, board, plan, etc." *West Texas Utilities Co.* v. *National Labor Relations Board*, 184 F. 2d 233, 238 (C. A. D. C.)

of any labor organization as a collective bargaining representative "if one or more of *its national or international officers*" were Communists.[18] The words italicized by us would seem to indicate that the bill was aimed at the local union and at "its national or international officers"—not at the federation of which a national or international union is a virtually autonomous part.[19] This language remained in the bill as it first passed both House and Senate[20] and was changed to its present form only when the non-Communist requirement was recast so as to provide for affidavits. It does not appear that any change in meaning was intended by the substitution of "such national or international labor or-

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[18] Section 9 (f) (6) of H. R. 3020, 80th Cong., 1st Sess., read, in pertinent part, "No labor organization shall be certified as the representative of the employees if one or more of its national or international officers, or one or more of the officers of the organization designated on the ballot taken under subsection (d), is a member of the Communist Party * * *." 1 Legislative History of the Labor Management Relations Act, 1947, p. 63 (1948).

[19] House Report No. 245 on H. R. 3020 refers to the fact that "At least *11 great national unions* and a large number of local unions seem to have fallen into the hands of Communists, although in every case Communists appear to compose only a very small minority of the membership. In most of these cases the rank and file object to communistic influence in their unions." Id. at 329. [Emphasis supplied.] There are only *two* federations of importance, the A. F. L. and C. I. O.

[20] Id. at 190, 250.

> ganization" for "its national or international officers."

The House Report itself, H. Rep. No. 245, 80th Cong., 1st Sess., p. 38, as the court noted in footnote 19, above, confirms the view that Congress conceived of the evil against which it was legislating as existing in national and international unions, and that the language it used was designed to reach them, and not federations. The same report, p. 10, also referred to the Act as providing:

> that the new Board shall not certify as *bargaining agents* for workers *Unions* whose officers are Communists. [Italics added.],

language which would not apply to the A. F. L. or C. I. O. in their relations with affiliated national and international unions.

That the Senate was well aware of the significance of the term "international union," appears from the following colloquy between Senators Morse and Aiken, both members of the Senate Committee (93 Cong. Rec. 4668, Leg. Hist., p. 1288):

> Mr. MORSE. I am very glad the Senator raised the point, because the phrase "international union" has had a great many ominous meanings read into it. When we speak of international unions, Mr. President, we think of such international unions as the International Woodworkers of

> America and the United Steelworkers of America. For that matter, some of the railroad brotherhoods are international unions, too, if they cover the Canadian railroad system as well as the American railway system. But the international unions referred to are limited almost entirely to American and Canadian unions. They have a constitution with which the local unions associate themselves, and they agree to abide by its terms.
>
> Mr. AIKEN. That has always been my understanding. I thought this a good time for the Senator from Oregon to state it in the Record.

It is, of course, true that the term "labor organization" *without the limiting adjectives "national or international"* was conceived by various Congressmen to apply, in other contexts, to the A. F. L. and C. I. O. Thus, in connection with Section 304, which makes it unlawful for any "labor organization" to make contributions or expenditures in connection with federal elections, various examples were given which indicated that the speakers believed that the A. F. L. and the C. I. O. would be affected by the provision (See *e. g.*, 93 Cong. Rec. 6439, 6440, 6447–6448, Leg. Hist. 1532, 1533–1534, 1548). But when Congress desired in the statute to refer to the A. F. L. or the C. I. O., either along with other labor organizations, or to them alone, it never used the term "national or international labor or-

ganization." Depending on the context, it used such words as "an organization," "labor organization," or "labor organization national or international in scope" instead. Thus, in Section 9 (b) (3), where it appears that Congress intended to preclude certification as representative of a plant guard unit of any labor organization affiliated with the A. F. L. or C. I. O. (H. Rep. No. 510, pp. 47–48, S. Rep. No. 105, pp. 3–5), Congress provided as follows:

> * * * no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is *affiliated directly or indirectly with an organization* which admits to membership, employees other than guards. [Italics added.]

The latter example is particularly illuminating since Congress was dealing in Section 9 (b) (3), as it was in Sections 9 (f), (g) and (h), with a relationship between a particular labor organization and some larger body. In 9 (b) (3), where the relationship to a federation was presumably intended to be included, the larger body was described as *"an organization"* with which the particular labor organization is "affiliated directly or indirectly." By way of contrast, in 9 (f), (g) and (h) the statute refers to a "national or international labor organization" of which the particular labor organization is an affiliate or constituent unit.

Finally, the President of the United States, in his veto message, indicated that he understood that the term "national or international labor organization" as used in Section 9 (h) did not apply to the federations.[41a] Again we quote from the opinion of the Court of Appeals in the *West Texas* case, 184 F. 2d at p. 238:

> * * * in his veto message, the President said, "The mere refusal by a single individual to sign the required affidavit would prevent an *entire national labor union* from being certified * * *. *The union and the affected industry* would be disrupted for perhaps a long period of time * * *." It seems to us that, had it been thought that 9 (h) required federation officers to file, the President would undoubtedly have pointed out the calamitous effect on the entire economy of noncompliance by a single federation officer. Not one but many industries and many "national labor unions" would then be affected by his failure to file. [Footnotes omitted.]

The Act contains additional evidence to support the Board's conclusion (*Northern Virginia Broadcasters,* 75 N. L. R. B., at p. 14), that,

[41a] That this was the President's view is particularly significant, for in urging that the bill be passed despite the President's veto, proponents of the measure repeatedly asserted that in the veto message "[t]he worst possible interpretation again and again is placed upon the bill's provisions," 93 Cong. Rec. 7530, Leg. Hist. 1641; see also, 93 Cong. Rec. A3043, 7529, Leg. Hist. 1626, 1638–1639.

> * * * Congress could not have deliberately intended "national or international labor organization," as used in Sections 9 (f), (g) and (h), to include the two great national federations within its meaning.

Thus, "national and international labor organizations" whose officers must file affidavits under Section 9 (h), must also file the information and reports required in Sections 9 (f) and (g). The nature of the requirements contained in those subsections clearly indicates that in using the terms "labor organization" and "national and international labor organization" Congress was thinking of national and international unions and their locals, not the federations. As the Board noted in its decision in *Northern Virginia Broadcasters* (75 N. L. R. B., at 14), "most of this information [required by Section 9 (f)] can have no application to the two major federations." The provisions having to do with dues and initiation fees and a statement of the labor organization's internal structure such as appointment of stewards, benefit plans, strike authorization, and bargaining policies and procedures, are in no manner applicable to the federations. As the Board stated (75 N. L. R. B., at 14, note 10):

> [The federations] charge no initiation fees or dues, do not concern themselves with qualifications for membership in their affiliated international, play no direct part in bargaining, do not authorize strikes.

> On the other hand, local and international unions are directly concerned with all these matters. Clearly this provision cannot have been drafted with the national federations in mind.

We think this legislative history furnishes affirmative support for the presumption that Congress used the term "national or international labor organization" in its accepted customary sense. But, if the few indications to the contrary should be given more weight than we believe them entitled to, the most that could be said would be that "the legislative history is more conflicting than the text is ambiguous." *Wong Yang Sung* v. *McGrath,* 339 U. S. 33, 49. Ambiguous legislative history will not suffice to rebut the presumption that Congress intended to use the words "national or international labor organization" as they are normally used in labor relations terminology. That presumption is reinforced by the unavailability of any other reasonable interpretation of the modifiers "national or international." An "international" in labor relations parlance is, as we have shown, an American trade union containing locals in Canada. A "national" union is one which does not have such locals. Thus, the words "national or international" together refer to the various trade unions making up the federations—which are themselves neither "national" or "international" labor organizations.

If this usage is rejected the only other meaning that can be given the words "national" and "international" would be their ordinary, non-technical meanings.[42] Such a construction, however, leads immediately to nonsense. Neither the C. I. O. nor the A. F. L. are "international" organizations in the dictionary sense.[43] There are, however, a number of international organizations (in the dictionary sense) with which American trade unions are affiliated—the International Labor Organization, the World Federation of Trade Unions, the International Confederation of Free Trade Unions, etc.[43a] If the terms "na-

[42] This is true, of course, except where it clearly appears that Congress intended to attach another, and different meaning to the words. When Congress intended to do that, as it did in the second proviso to Section 10 (c), it made its meaning perfectly plain by adding to the words "national or international", the qualifying words "in scope." See, S. Rep. No. 105, 80th Cong., 1st Sess., pp. 12–13; H. Rep. No. 510, 80th Cong., 1st Sess., pp. 40, 48, 54. Compare the use of the phrase "national or international in scope" in the proposed Senate amendment dealing with industry-wide bargaining (S. Rep. No. 105, p. 51). The absence of these qualifying words in Sections 9 (f), (g) and (h) thus gives added force to the view that in those Sections Congress was not using the words "national or international" in a sense different from their normal usage in labor relations parlance.

[43] Canadian locals of international unions affiliated with the C. I. O. and the A. F. L. are affiliated directly with the Canadian counterparts of the federations—the Canadian Congress of Labor and the Canadian Trades and Labor Congress.

[43a] Price, John, *The International Labour Movement* (Oxford University Press, 1945), pp. 51–55, 173–178; *Free Trade Unions of the World Unite in New Confederation*, 50 The

tional" or "international" are given their non-customary meaning then "national" can, it is true, be taken to include the C. I. O. and the A. F. L. But, equally, "international" would then include the genuinely international labor organizations with which American trade unions are affiliated. The statute thus read would require that all of the officers of such genuinely international labor organizations file non-Communist affidavits (and also that such organizations file financial reports with the United States Department of Labor) before any American labor organization affiliated with it could utilize the processes of the Board. It cannot be assumed that Congress intended such an absurd result. Yet that result necessarily follows if the words "national or international" are not confined to their customary trade union meanings.

B. *The Board's construction of the term "national or international labor organization" in relation to federations effectuates the policy of the Act and comports with the objectives of Congress*

1. *The objective of Congress in Section 9 (h) was to prevent political strikes and preserve the integrity of the collective bargaining process by driving Communists*

Labour Gazette (Department of Labor, Ottawa, Canada, Feb., 1950), pp. 172–182; Sturmthal, Adolf, *The International Confederation of Free Trade Unions*, 3 Industrial and Labor Relations Review, p. 375; Becu, Omer, *Role of the Trade Secretariats*, The American Federationist (March 1951), p. 25.

from positions in which they can exercise power to engineer political strikes and subvert the bargaining process

Speaking of this Court's decision in *American Communications Association* v. *Douds*, 339 U. S. 382, the Court of Appeals in the *West Texas* case said (184 F. 2d 233, at p. 236):

> * * * It was held therein that the constitutional justification for a non-Communist affidavit lay in its function as a deterrent to political strikes which might seriously burden interstate commerce. The emphasis throughout the opinion was that 9 (h) was aimed at those who control the collective bargaining process and hence are in a position to call political strikes. Thus, Mr. Chief Justice Vinson, speaking for the Court, pointed out that Communists might carry their revolutionary objectives "into their conduct of union affairs by calling political strikes"; that their beliefs "strongly indicate a will to engage in political strikes and other forms of direct action when, as officers, they direct union activities." It was expected, said Mr. Justice Jackson, concurring in part and dissenting in part, that when the Communist affiliation of union officers was called to the attention of the union membership, it would no longer "entrust its bargaining power, its records, and its treasury to such [Communist] hands. When it does * * * [i]ts officers cease to be interested in correcting grievances but seek to worsen and exploit them;

they care less for winning strikes than that they be long, bitter and disruptive." To prevent such a distortion of the Act's overriding purpose—which is the promotion of peaceful collective bargaining—Congress could "protect a labor union from Communist Party domination * * * [just as] from employer domination."

Analysis shows that it is the locals and their parent nationals and internationals who participate in the collective bargaining process and are empowered to call strikes. Federations neither participate in collective bargaining on their behalf, nor are they empowered to call strikes among the autonomous organizations which are affiliated with them. For example, examination of the constitutions of the federation here involved, the C. I. O., and the charging international union involved here, the Textile Workers Union of America, reveals that the process of collective bargaining falls completely within the jurisdiction of the latter. Thus, Article II, Section 2 of the Constitution of the Textile Workers Union of America provides that the International shall accomplish its purpose "by * * * negotiating collective bargaining agreements with employers * * *." Article IX, Sec. 5 and Article XVI require specific approval by the international's officers of all contracts made by subordinate local boards and unions. The International's control over the collective bargaining

of its locals is thus made exclusive. Moreover, under Article VIII, Secs. 3, 5 and Article IX, Sec. 3, the International's control extends as well to any by-laws or rules of the local, or any jurisdictional controversy to which the local may be a party. Article VIII, Section 5 empowers the International's Executive Council to amend or revoke a local's charter, and Article VII, Section 4 empowers the council to "take possession of and administer the affairs, funds and property of any local union," when it is deemed "necessary to protect the interests of the International Union." Article XVII provides that strikes may be called by a local only when authorized in writing by the General President of the International.

At no place in the entire body of the Textile Workers' Constitution, except on the title page, is it shown that the International is affiliated with the Congress of Industrial Organizations. In the field of collective bargaining the Textile Workers' authority is absolute. It is a completely autonomous organization.

In contrast, the Constitution of the C. I. O. does not speak of the C. I. O. as engaging in collective bargaining, authorizing strikes, or otherwise controlling the affairs of its affiliated national and international unions or their member locals. On the contrary it provides in Article II that the C. I. O. will accomplish its objectives "(2) by extending the benefits of collective bargaining, *by forming labor unions capa-*

ble of dealing with employers." [Emphasis supplied.] Nowhere in the document is there any grant of power to the C. I. O. which would enable it to control, influence or interfere with the bargaining practice of its affiliated internationals or nationals or their locals. It has no role in their collective bargaining policies or procedures.

Qualified experts confirm this analysis. "The constituent national unions have reserved to themselves the determination of their policies with respect to such matters as admission to membership, labor saving devices, methods of payment, rates of wages, hours of labor, collective bargaining, and strikes. The officers of the Federation may exercise some moral influence upon them in these matters, but the Federation leaves the final decisions to the respective affiliated national unions; it does not lay down their policies for them, nor does it carry on collective bargaining for them, nor order them out on strike, nor order them back to work after they have struck." McCabe & Lester, *Labor and Social Organization* (Little, Brown and Co., 1938), pp. 48–49.

As the Court of Appeals said in the *West Texas* case (184 F. 2d 233, at 237):

> * * * The position of the federation is not markedly different from that of a trade association made up of individual employers. Like the latter, it seeks to coordinate policy, provide encouragement, and per-

form certain staff functions such as research and publicity. Like the latter, it can hardly be described as a participant in or as in control of the collective bargaining process.

It follows that the officers who must be required to file the affidavits, if the objectives of Congress are to be achieved, are the officers of locals and of national and international labor organizations, for it is they who participate in the collective bargaining process and are empowered to call and to perpetuate strikes. But, insofar as charges and petitions filed by such organizations are concerned, the objectives of the statute do not require that the officers of the federation with which they are affiliated must file, since federation officers take no part in bargaining where organizations of this character are involved, and are not empowered to call strikes of their members. On the other hand, where locals or organizing committees affiliated directly with a federation file the charge or petition, the objective of the statute does require that officers of the federation file affidavits, for the federation officers do participate in bargaining with employers on behalf of such locals and organizing committees and are empowered to call strikes of their members. This, of course, is precisely what the Board's construction of Section 9 (h) envisions (*supra*, pp. 92–98), and the Board's construction therefore

demonstrably accords with the purpose and objective of Congress.

2. *The means selected by Congress for accomplishing its purpose are effectuated by the Board's view*

The Board's construction accords with the scheme of the statute for still another reason. The legislative history shows, as this Court recognized in the *Douds* case, see particularly the opinion of Mr. Justice Jackson, 339 U. S., at p. 431, and the dissenting opinion of Mr. Justice Black, at p. 450, that Congress relied on union members to oust from office those officers who either could not or would not file affidavits. As the Board said (*Northern Virginia Broadcasters*, 75 N. L. R. B., at pp. 14–15), Section 9 (h) was designed—

> to compel those union leaders who were actually Communists or adhered to Communist doctrines to run the risk of a prosecution for perjury, or else forfeit the privilege of using the Board's machinery to advance the interests of the local, national or international unions of which they were officers. * * * The assumption is that if the facts are made known through this filing procedure, union members, provided they can reasonably be expected to have the power to do so, will soon remove Communists from leadership rather than allow themselves to be precluded from enjoying the benefits of the Act.

Members of local unions can accomplish this objective with respect to officers of their locals and their national or international officers, but not with respect to officers of federations, for they are not even members of the federation, and have no power to vote, either directly or through local delegates, for or against particular federation officers. We think the Board was entirely correct when it said in the *Northern Virginia* case, *ibid.* at p. 15,

> Are Communists likely to be eliminated from positions of influence in the labor movement by our barring those local and international unions that are in full compliance with Section 9 (h) from using the facilities of the Board, merely because certain officers of a parent organization over whose status they have only the most remote control may choose not to sign the required affidavits? We think not. * * * Control is too slight; the relationship is too remote.

Furthermore, there was ample reason for Congress, in view of its objectives, to give the phrase "national or international labor organization" its customary meaning. As the Board observed (75 N. L. R. B., at 15), the officers of the federations—

> are, with few exceptions, likewise officers of the autonomous international unions. In the latter capacity they have a strong incentive to comply with Section 9 (h);

> if they fail to do so, their own internationals lose the benefits of the Act. It is at this point that the shoe will, and should, pinch any top leaders of labor who choose not to comply. But, absent any impressive evidence to the contrary, we question whether Congress intended to take the further step of letting the action of those international officers who happen also to be members of the governing body of a parent federation determine the fate of the members of a wholly different international labor organization, all of whose local and international officers have complied in full.

And finally, as we have shown, *supra*, pp. 11–12, 83–84, the necessity of construing Section 9 (h) in its application to the major federations posed for the Board an intensely practical administrative problem. To follow the former General Counsel's interpretation would have meant that none of the locals and international unions could have utilized the Board's services at all, unless and until the internationals seceded from the federations or the federations expelled those internationals whose officers refused to file affidavits. Unless this happened, and in any event, in the meantime, Communist officers of local and international unions "would be under no pressure to stand up in the spotlight and be counted; the individual members of these unions, in turn, would lose all incentive to eliminate

such officers in order to enjoy the fruits of compliance" (75 N. L. R. B., at pp. 15–16).

The undisputed objective of Congress, to rid locals and internationals of Communist officers, could not under these circumstances even have begun to be effectuated. Moreover, even assuming that federation officers, after a time, would have filed the affidavits or been replaced, it was clear that to await that process would have meant that for a considerable period of time administration of the unfair labor practice and representation provisions of the Act would have had to cease. As the Board said (75 N. L. R. B., at p. 16): "Nothing it seems to us, could play more readily into the hands of dissension-seeking Communist leadership."

The Board was thus required to choose between an interpretation which would paralyze the Act, at least for a period, and one which would make it live. That it chose correctly is made clear by the expressed approbation of the Joint Committee, *supra*, pp. 85–89. In its Report to Congress on March 1, 1949, S. Rep. No. 986, 80th Cong., 2d Sess., Pt. 3, p. 3, the Committee said:

> Elimination of Communist partisans and adherents from official posts and positions of responsibility in both national and local unions is one of the most pronounced and significant effects of the Labor Management Relations Act, 1947. There are still unions, in a steadily declining number,

> however, whose officials have not filed non-Communist affidavits in compliance with the law. A number of unions have fully met this provision with the ouster of officials who have failed to meet this statutory requirement. It has been demonstrated that the American workingman will take steps to rid his union of communistic leadership when the character of that leadership has been identified to his satisfaction.

The Board was certainly justified in not delaying the initiation of this process until all officers of the federation complied.

The basic premise upon which the Courts of Appeals for the Fourth and Fifth Circuits predicated their rejection of the Board's view is that Congress intended in section 9 (h) "to wholly eradicate and bar from leadership in the American labor movement, *at each and every level,* adherents to the Communist Party and believers in the unconstitutional overthrow of our Government." [Italics added.] *National Labor Relations Board* v. *Postex Cotton Mills,* 181 F. 2d 919, 920 (C. A. 5); (R. 124). The House Report indicated it was Congress' desire that (H. Rep. No. 245 on H. R. 3020, p. 39): "[Communists] should be weeded out of the labor movement."

But indications of this nature as to the ultimate objective which Congress desired to achieve are not, in this instance at least, as reliable evidence of the means selected by Congress for achieving

its objective as are the words of the statute. The words of the statute make it unequivocally plain that the means Congress selected were not designed or intended to affect Communist leaders "at each and every level" of the trade union movement. Apart from the officers of the organization filing the petition or charge, the only organizations whose officers are affected by the affidavit requirement are "national or international" organizations with which the petitioning or charging organization is affiliated. But the structure of the American labor movement contains a great many other labor organizations which seldom, if ever, file petitions or charges themselves, with which local unions are affiliated. Within international unions there is often a regional organization between the locals and the internationals. See *e. g.*, Constitution of the Textile Workers Union of America, Article IX; Constitution of the International Association of Machinists, Article XVII. In addition, among A. F. L. unions, there are Central Labor Unions, which are city-wide federations of locals affiliated with A. F. L. internationals. Similarly, at the state level, there are state federations of labor with which the A. F. L. locals are affiliated. Likewise, in the C. I. O., there are city or county industrial union councils, with which all C. I. O. local unions in the area are affiliated, and state industrial union councils with which all locals in

the state are also affiliated.[43b] Each of these regional organizations, of course, have officers. Yet, clearly, these officers are not affected at all by Section 9 (h), since regional federations of this sort could not possibly be held to fall within the category of "national or international" organizations.

Congress' deliberate omission of regional federations like these, is, in fact, a further affirmative indication that Congress did not intend the affidavit or information requirements to apply at all to federations. For, if Congress had so intended it would, beyond doubt, have covered local as well as national federations, just as it covered a local charging union as well as the national or international union with which it is affiliated.

The Court below stated in its opinion in the instant case (R. 123) that in its view of the purpose of Congress,

> * * * it is much more important to exclude communists and others plotting the overthrow of the government by force from holding office in the great national labor organizations such as the C. I. O. and the A. F. L. than to exclude them from

[43b] Faulkner, Harold U. and Starr, Mark, *Labor in America* (Harper & Bros., 1944), pp. 112, 113–114; Hoxie, Robert F., *Trade Unionism in the United States* (D. Appleton-Century Co., 1936), pp. 126–128; Barbash, Jack, *Labor Unions in Action* (Harper & Bros., 1948), pp. 28–29; Taft, Philip, *Economics and Problems of Labor* (Stackpole Sons, 1942), pp. 505–506.

> office holding in their affiliates; and it is not reasonable to suppose that Congress did not intend the officers of the former to be covered by its provisions. It is true that it is the officers of the affiliates who call the strikes; but it is the officers of the national or parent organizations who shape labor policies that cause the strikes to be called, and this is particularly true of general strikes or strikes having a political purpose.

But if this position constituted an accurate reflection of the intention of Congress it is surprising that nowhere during the course of the lengthy debates on the bill, and nowhere in the reports, did anyone suggest that the bill was even intended to reach officers of the A. F. L. and the C. I. O., much less that it was more important to reach them than it was to reach the officers of locals or internationals. The legislative history shows that the example most often referred to of the evils which Congress desired to uproot was the Communist led and inspired political strike at Allis-Chalmers, note 32, *supra,* pp. 69–70. *American Communications Association* v. *Douds,* 339 U. S., at p. 388, cf. pp. 396, 407. That strike, as Congress was aware, was instigated by Communist leaders of the local, not by C. I. O. officers, and was certainly not the result either of policies or of program, of the C. I. O. As this Court pointed out in the *Douds* case, *ibid.,* "A full hearing [with respect to this strike] was given

not only to company officials, but also to leaders of the international and local unions involved." And the Report of the House Committee, quoted above p. 109, n. 19, which must certainly be regarded as authoritative as to this, establishes that Congress regarded the danger of Communist control as present in eleven national unions which had been captured by Communists, not in either of the two major federations.

Moreover, if the gauge of Congress' purpose and objectives applied by the Fourth Circuit were accurate, it is even more surprising that the Joint Committee, after the Board's decision in the *Northern Virginia* case, did not criticize the decision and recommend immediate amendment of the statute. The members of the Joint Committee, all members of the 80th Congress who played prominent roles in the enactment of Section 9 (h), may reasonably be thought to have been more familiar than anyone else with the actual objectives and purposes of Congress.

The Board, like the Courts of Appeals for the Fourth and Fifth Circuits, observed in its opinion in the *Northern Virginia* case, 75 N. L. R. B., at p. 14, that the purpose of Congress generally was "to eliminate Communist influence from the labor movement of the United States." But we submit that it does not follow from that alone that Congress intended to require affidavits from officers of all federations and other bodies, merely because such officers may be influential in the

labor movement. There are groups other than the two major federations, also national in scope, within the labor movement, whose officers also, to some extent "shape labor policies" and are "recognized as the spokesmen and representatives of organized labor in this country." Opinion of the Court below (R. 123), quoting Board Member Gray dissenting, in the *Northern Virginia* case. Among these, to name only a few, are the United Labor Policy Committee—set up by the major federations, the railroad brotherhoods and the large independent unions, to represent the American labor movement in the formulation of governmental policies for dealing with the present emergency [43c]—and the Political Action Committees of the A. F. L. and C. I. O. Under the Fourth Circuit's test officers of these organizations (and many more) would also be required to file affidavits before local unions could utilize the facilities of the Act. But organizations of this kind are certainly not normally considered "labor organizations;" they would clearly be excluded under the definition in Section 2 (5); and there is no showing whatever that Congress contemplated that Section 9 (h) would reach such groups. Indeed, as we have shown above, p. 116, the major federations are themselves affiliated with international federations, the officers of which are not entirely with-

[43c] 72 Monthly Labor Review (United States Department of Labor (January 1951), p. IV; 27 L. R. R. M. 81.

out influence in the labor movement here and abroad. Under the Fourth Circuit's test there would be no basis for holding that officers of such international federations were not also required to file affidavits as a condition to the use of Board facilities by a local union.

In short, we think, the line must be drawn somewhere if the objective of Congress is to be effectuated at all. Every indication in the language and scheme of the statute, as well as the specific evils which Congress was trying to eradicate, shows that the Board drew the line where Congress intended that it should be drawn. That the considerations which led to enactment of the statute might have warranted Congress in drawing the line more broadly does not prove that it did not draw the line where it did. In enacting Section 9 (h) Congress was legislating in an uncharted field which presented grave constitutional as well as practical problems. *American Communications Ass'n* v. *Douds, supra.* That its legislation may not have reached all levels of the labor movement is not surprising; Congress struck where the evils were most apparent and real. Congress may well have thought that its program would best be effectuated by a "cautious advance, step by step." *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411. To read unwarranted breadth into the language of a statute distorts the will of Congress no less than to read its legislation in "a spirit of muti-

lating narrowness." *United States* v. *Hutcheson*, 312 U. S. 219, 235.

C. *The Board's construction and application of Section 9 (h) is reasonable and should therefore be sustained.*

Even if Congress did not leave to the Board and the General Counsel exclusively the task of construing and applying Section 9 (h), it is certain that "That task has been assigned primarily to the agency created by Congress to administer the Act." *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 130. Where, as in this case, "the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited. * * * the Board's determination * * * is to be accepted if it has 'warrant in the record' and a reasonable basis in law." *Hearst* case, *supra*, 131. The test on review is "reasonableness and not rightness." [*] Accord: *Gray* v. *Powell*, 314 U. S. 402, 412–413; *Rochester Telephone Corporation* v. *United States*, 307 U. S. 125, 146; *Unemployment Compensation Commission of Alaska* v. *Aragon*, 329 U. S. 143, 153–154; *Cardillo* v. *Liberty Mutual Co.*, 330 U. S. 469, 477–478; *Securities and Exchange Commission* v. *Chenery Corporation*, 332 U. S. 194, 207.

[*] Davis, *Scope of Review of Federal Administrative Action*, 50 Col. L. Rev. 559, 572.

Even if the question be regarded as one of law the Board's construction is entitled to great weight for "it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 315. Application of that rule is particularly appropriate "if the scope of the command is indefinite and doubtful." *Ibid.* It is clearly pertinent here, for, as the Board observed in the *Northern Virginia* case, 75 N. L. R. B., at pp. 12–13, "no one can say * * * that Congress surely meant one thing or surely meant the other." And it must not be overlooked that the question on which the Board was here required to pass involved precisely those elements of familiarity with "a specialized field of knowledge" which entitles the agency's determination to "authority" in the courts. As this Court said in the *Universal Camera Corp.* v. *National Labor Relations Board*, No. 40, this Term, slip opinion, p. 13, the Taft-Hartley Act was not "intended to negative the function of the Labor Board as one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect."

Certainly it has not been shown, and it cannot

be shown, that the Board's construction was unreasonable. Under these circumstances the Board's construction is entitled to stand, even though some courts, or this Court, might prefer a contrary construction.

III

THE SUBSEQUENT COMPLIANCE OF THE C. I. O. HAS CURED ANY DEFECT IN THE UNION'S STANDING.

Even assuming that compliance by the C. I. O. is prerequisite to access by the charging union to the Board's facilities, nevertheless, the subsequent compliance by the C. I. O. has cured any incapacity which may have existed in the union at the time of the issuance of the Board's complaint. The C. I. O. came into full compliance on December 22, 1949. By virtue of the C. I. O.'s compliance, whatever disability originally existed in the union was lifted so that at the time the proceeding came before the Court of Appeals, Section 9 (h) presented no bar to the enforcement of the order.

Every consideration of equity and practicality calls for the determination of this proceeding on its merits rather than on procedural grounds. No reasonable purpose would or could be served by retroactively invoking Section 9 (h) of the Act to dismiss this proceeding because of the compliance status of the C. I. O. at the time of the issuance of the complaint. This condition has since been completely cured, and the policy

of Section 9 (h), to secure for the employees and the public the benefits incident to freeing unions from the influence of Communist and other subversive officers, has been fulfilled. A contrary view would lead only to a futile retracing of steps already taken. A dismissal of the complaint at this late date would leave outstanding the original charge, upon which the General Counsel could now issue an unassailable complaint and take the whole proceeding through to a new decision and order identical with the decision and order now before the Court.[45] The result of the whole undertaking "would only serve to delay final adjudication" (*Capitol Fire Ins. Co.* v. *Langhorne,* 146 F. 2d 237, 243 (C. A. 8), and it would be pointless to the extreme, for a "reversal to reach the same result later will

[45] Since the unfair labor practice in this case occurred while the Wagner Act was in effect and before the Taft-Hartley Act was even passed, there can be no question that the employer's obligation was not affected by any subsequent non-compliance by the union. This case, therefore, does not involve the question which the Government asked this Court to reserve in the *West Texas* case, No. 466, namely, whether non-compliance, if contemporaneously asserted by the employer as the reason for his refusal to bargain, relieves him of his obligation. See Memorandum for the National Labor Relations Boar in No. 466, this Term. Indeed, since the unfair labor practice occurred prior to the Amendments, this case does not even involve the issue decided by the Board in the *New Jersey Carpet Mills case*, 92 N. L. R. B. No. 122, 27 L. R. R. M. 1114, namely, that non-compliance by a charging union, if not contemporaneously asserted by the employer as his reason for refusing to bargain, does not relieve him of his statutory duty.

serve little purpose" (*National Labor Relations Board* v. *Quest-Shon Mark Brassière Co.*, 185 F. 2d 285, 289 (C. A. 2)).

Retroactively curing a disability of plaintiffs to sue is not new in law. Plaintiffs may be under a personal disability to bring suit although the conduct of which they complain unquestionably violates their rights. Examples are infants, alien enemies, corporations whose power to sue has been temporarily suspended by statute for failure to pay certain taxes or file certain papers, or an executor who has not fully qualified in a particular jurisdiction. Nevertheless, many have successfully maintained actions commenced during the period of their disability, surmounting objections directed to their capacity to sue by showing that their disability has been retroactively cured by intervening factors such as the passage of time or the taking of some action having the same effect in those proceedings as the C. I. O.'s coming into compliance has in this one.[46]

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[46] See *e. g.*, *Hall* v. *Citizens National Trust & Savings Bank*, 53 Cal. App. 2d 625, 128 P. 2d 545; *Diaz* v. *Parkland Estates*, 114 Fla. 273, 154 So. 199; *Germain* v. *Sheehan*, 25 Minn. 338; *Erie R. Co.* v. *Fritsch*, 72 F. 2d 766, certiorari denied, 293 U. S. 620; *Hamlin* v. *Stevenson*, 4 Dana (34 Ky.) 597; *Wyrosdick* v. *Age-Herald Pub. Co.*, 217 Ala. 657, 117 So. 28; *Bell* v. *Burkhalter*, 183 Ala. 527, 62 So. 786; *Holm* v. *Eastern Greyhound Lines*, 252 App. Div. 778, 299 N. Y. Supp. 154; *Hicks* v. *Beam*, 112 N. C. 642, 17 S. E. 490; *Hamersly* v. *Lambert*, 2 Johns Ch. (N. Y.) 508; *Maryland Casualty Co.* v. *Superior Court*, 91 Cal. App. 356, 267 Pac. 169; *California*

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment below should be reversed and the case remanded to the court below for further proceedings consistent with a holding that the validity of the Board's order is not affected by the fact that officers of the C. I. O. had not filed non-Communist affidavits at the time the complaint in this case was issued.

Respectfully submitted.

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National Labor Relations Board.

APRIL 1951.

Savings and Loan Soc. v. *Harris*, 111 Cal. 133, 43 Pac. 525; *Ward Land and Stock Co.* v. *Mapes*, 147 Cal. 747, 82 Pac. 426; *Shipman, Denny, Rhame & Co.* v. *Portland Constr. Co.*, 64 Ore. 13, 128 Pac. 989; *Smith* v. *Peckham*, 39 Wis. 414. As to the retroactive effect of this rule not impeding its application, see *Addison* v. *Holly Hill Fruit Products Co.*, 322 U. S. 607, 618, *et. seq.*

APPENDIX I

The pertinent provisions of the National Labor Relations Act as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. III, 141 et seq.) are as follows:

SEC. 2. * * *

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of work.

* * * * * *

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this

Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

* * * * *

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Sec-

retary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of

employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

SEC. 10. * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof

upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723–B, 723–C).

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause

to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided,* That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further,* That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case

may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set

forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and

by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

APPENDIX II

TABLE I.—*Over-all experience of labor unions with compliance with Secs. 9 (f), (g) (h) for 1 year beginning July 1948*

[Source: Official Records of Affidavit Compliance Branch, General Counsel's Office, N. L. R. B.]

	Local unions in compliance (number of unions)	Local unions lapsed (number of unions)		Local unions in compliance (number of unions)	Local unions lapsed (number of unions)
July 31, 1948	8,363	3,943	Jan. 31, 1949	6,790	8,538
Aug. 31, 1948	9,372	3,506	Feb. 28, 1949	7,652	7,899
Sept. 30, 1948	10,139	2,925	Mar. 31, 1949	8,646	7,403
Oct. 31, 1948	10,352	3,741	Apr. 30, 1949	9,484	6,829
Nov. 30, 1948	11,132	3,576	May 31, 1949	10,671	6,103
Dec. 31, 1948	7,901	7,200	June 30, 1949	9,101	7,866

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TABLE II.—*Experience of 9 representative unions with compliance with Secs. 9 (f), (g) (h)*

[Source: Records of Affidavit Compliance Branch, General Counsel's Office, N. L. R. B.]

	9 (h)		9 (f) and (g)		Compliance lapsed
	In compliance	Compliance expired	In compliance	Compliance expired	
Union A	12- 1-47	4-30-49	7-19-48	12-31-48	12-31-48 to 1-7-49 9 (g).
	5- 2-49	4- 4-50	1- 7-49	3-31-49	3-31-49 to 4-4-49 9 (g).
			4- 4-49	12-31-49	4-30-49 to 5-2-49 9 (h)
Union B	11-14-47	6-30-48	12- 4-47	6-30-48	6-30-48 to 7-15-48 9 (g).
	8- 9-48	6-16-49	7-15-48	9-30-49	6-30-48 to 8-9-48 9 (h)
	6-28-49	6-18-50			6-16-49 to 6-28-49 9 (h).
Union C	10-20-47	12-31-47	4-14-48	10-31-49	10-31-48 to 3-15-49 9 (g)
	2-20-48	12-31-48	3-15-49	10-31-49	12-31-47 to 2-20-48 9 (h).
	3-15-49	12-31-49			12-31-48 to 3-15-49 9 (h).
Union D	9- 5-47	12-31-47	1-16-48	12-31-48	12-31-48 to 1-19-49 9 (g)
	1-12-48	7- 1-48	1-19-49	3-31-49	3-31-49 to 4-7-49 9 (g).
	7-15-48	12-23-48	4- 7-49	12-31-49	12-31-47 to 1-12-48 9 (h).
	1-18-49	12-31-49			7-1-48 to 7-15-48 9 (h).
					12-23-48 to 1-18-49 9 (h).
Union E	11- 7-47	12-31-47	12-10-47	12-31-47	12-31-47 to 5-3-48 9 (g).
	5- 3-48	12-31-48	5- 3-48	12-31-48	12-31-48 to 3-14-49 9 (g).
	3-14-49	12-31-49	3-14-49	12-31-48	12-31-47 to 5-3-48 9 (h.)
					12-31-48 to 3-14-49 9 (h).
Union F	11-24-47	12-31-47	11-24-47	12-31-48	12-31-48 to 1-7-49 9 (g).
	3-22-48	6- 7-48	1- 7-49	12-31-49	12-31-47 to 3-22-48 9 (h).
	6-14-48	12-31-48			6-7-48 to 6-14-48 9 (h).
	1- 5-49	1- 2-50			12-31-48 to 1-5-49 9 (h).
Union G	10-29-47	1- 1-48	10-29-47	12-31-47	12-31-47 to 3-18-48 9 (g).
	2- 2-48	1-30-49	3-18-48	12-31-48	12-31-48 to 1-14-49 9 (g).
	2- 7-49	1- 1-50	1-14-49	12-31-49	1-1-48 to 2-2-48 9 (h).
					1-30-49 to 2-7-49 9 (h).
Union H	1-27-49	1- 5-49	3-22-48	11-10-48	11-10-48 to 11-24-48 9 (g).
	4-18-47	1-11-50	11-24-48	12-31-48	12-31-48 to 4-6-49 9 (g).
			4- 6-49	12-31-49	1-5-49 to 4-18-49 9 (h).
Union I	11- 3-47	12-31-47	12- 8-47	12-31-47	12-31-47 to 1-27-48 9 (g).
	1-12-48	12-31-48	1-27-48	12-31-48	12-31-48 to 2-15-49 9 (g).
	2-11-49	12-31-49	2-15-49	12-31-49	12-31-47 to 1-12-48 9 (h).
					12-31-48 to 2-11-49 9 (h).

Union A—Hod Carriers—Local 89, A. F. L.
Union B—Carpenters—Local 530, A. F. L.
Union C—Moulders—Local 735, Ind.
Union D—Machinists—Local 735, Ind.
Union E—Brewer Dry Dock Employees Assn., Inc.
Union F—Machinists Local 1047, Ind.
Union G—Retail Clerks—Local 157.
Union H—Bakery—Local 119, A. F. L.
Union I—Bakery—Local 183, A. F. L.

APPENDIX III

No. 11128

United States Court of Appeals for the Sixth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

ARTHUR J. WILTSE, DOING BUSINESS AS THE ANN ARBOR PRESS, RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

Decided March 23, 1951

Before SIMONS, MCALLISTER, and MILLER, Circuit Judges.

MCALLISTER, Circuit Judge. The National Labor Relations Board filed its petition for enforcement of its order requiring respondent to reinstate workers alleged to have been discharged as a result of unfair labor practices in violation of the National Labor Relations Act, as amended; to cease and desist from discouraging membership in a union and from interfering with and coercing employees in the exercise of their right to engage in concerted activities; and to post appropriate notices. In answer, respondent submits that, under various provisions of the Act, the Board was without jurisdiction to hear and determine the controversy; that respondent's operations

did not affect interstate commerce, and that there was not sufficient admissible evidence in the record to sustain the Board's findings that respondent was guilty of unfair labor practices.

The National Labor Relations Act, as amended, known also as the Labor-Management Relations Act of 1947, 61 Stat. 136, 29 U. S. C. Supp. III, Sections 151, et seq., provides that no investigation shall be made by the Board of any question affecting commerce concerning the representation of employees raised by a labor organization, and that no petition of such an organization shall be entertained or complaint issued pursuant to a charge by a labor organization, unless such organization and any national or international labor organization of which it is an affiliate shall have filed with the Secretary of Labor copies of its constitution and bylaws and certain other information as to its procedures and finances, and distributed its financial statement to its members, and shall have filed with the Board affidavits of its officers that they are not members of the Communist Party. Sections 9 (f), (g), and (h) of the Act, 29 U. S. C. A., Sections 159 (e), (f), and (g).

There was no proof in the proceedings before the Board, or in this court, that that union, here in question, had complied with the requirements of the above mentioned provisions of the Act. Failure to comply was not pleaded as a defense by the answer.

On the principal issue in this controversy, respondent contends that Sections 9 (f), (g), and (h) of the Labor-Management Relations Act are jurisdictional; that compliance with the require-

ments of these sections by the union must be shown before the Board has jurisdiction to proceed; and that since there was no showing that the union had complied with these sections, the Board had no jurisdiction to issue its complaint or enter its order in this case.

In *National Labor Relations Board* v. *Greensboro Coca Cola Bottling Co.*, 180 F. (2d) 840 (C. A. 4), similar contentions were considered and determined. In that case, in passing upon the argument that the Board was without jurisdiction to enter its order because the union had not complied with the above-mentioned sections of the statute, Judge Parker, speaking for the court, said:

> The company's contention that the Board was without jurisdiction to enter the order is based upon an allegation in the answer before the Board to the effect that the union upon whose petition the complaint of the Board was filed had not complied with the requirements of section 9 (f), (g), and (h) of the Labor-Management Relations Act. These provisions of the statute require that labor organizations desiring to obtain the benefits of the act shall file certain operational and financial statements with the Secretary of Labor, distribute the financial statement to their members, and have their officers submit affidavits that they are not members of the Communist Party. There is nothing whatever in the evidence, however, to show that the union has not complied with these statutory requirements; and, in the absence of proof to the contrary, we must assume that they have been complied with * * * Where there is nothing to show, therefore,

> that the union has failed to comply with the statutory provisions, where general counsel has filed a complaint upon its petition, and where the Board has granted relief upon the complaint, we must assume that the law has been complied with. Omnia praesumuntur rite esse acta. *United States* v. *Chemical Foundation,* 272 U. S. 1, 14–15, 47 S. Ct. 1, 71 L. Ed. 131; *Smith* v. *St. Louis & S. W. Ry. Co.,* 181 U. S. 248, 258, 21 S. Ct. 603, 45 L. Ed. 847.

In answer to the claim that compliance must first be shown before the Board has jurisdiction to file complaint, hear the controversy, and enter its order, the court observed:

> The company contends that compliance with the statutory provisions is jurisdictional and that compliance must be shown before the Board has jurisdiction to proceed. There is nothing in the language of the statute expressly requiring this; and if such view were to be taken, it would greatly hamper the administration of the act, since it would be incumbent upon the general counsel to show compliance, not only with the requirements as to filing affidavits but also with those requiring the giving of notice to members; and this he would have to do in every case, even though there were no question as to compliance. Surely nothing of the sort was contemplated in the passage of the statute; and it is well settled that the courts will not construe a statute in such way as to make it administratively unworkable if any other construction is possible. *Haggar* v. *Helvering,* 308 U. S. 389, 394, 60 S. Ct. 337, 84 L. Ed. 340; *Gruver* v. *Com'r,* 4 Cir., 142 F. 2d 363, 366; *Fides* v. *Com'r,* 4 Cir., 137 F. 2d 731. We think it clear that the

> requirement of the statute goes, not to the jurisdiction of the Board, but to the standing of the union to ask relief before it. As said by Mr. Justice Holmes in *Fauntleroy* v. *Lum*, 210 U. S. 230, 235, 28 S. Ct. 641, 642, 52 L. Ed. 1039: "No doubt it sometimes may be difficult to decide whether certain words in a statute are directed to jurisdiction or to merits, but the distinction between the two is plain. One goes to the power, the other only to the duty, of the court. * * * Whether a given statute is intended simply to establish a rule of substantive law, and thus to define the duty of the court, or is meant to limit its power, is a question of construction and common sense."

In addition to the persuasiveness of the foregoing opinion, other sections of the statute, and the report of the Congressional Committee provided thereunder, are illuminating in arriving at a determination whether the failure to allege or prove compliance of the union with Sections 9 (f), (g) and (h) of the Act were jurisdictional conditions precedent.

Among the most important provisions of the Labor-Management Relations Act of 1947 was the creation of "a joint congressional committee, to be known as the Joint Committee on Labor-Management Relations * * *, and to be composed of seven Members of the Senate Committee on Labor and Public Welfare, to be appointed by the President pro tempore of the Senate, and seven Members of the House of Representatives Committee on Education and Labor, to be appointed by the Speaker of the House of Representatives." It was further provided that the

committee should elect a chairman and vice chairman from among its members, and, acting as a whole or by subcommittee, should conduct "a thorough study and investigation of the entire field of labor-management relations, including but not limited to—

(1) the means by which permanent friendly cooperation between employers and employees and stability of labor relations may be secured throughout the United States;

(2) the means by which the individual employee may achieve a greater productivity and higher wages, including plans for guaranteed annual wages, incentive profit-sharing and bonus system;

(3) the internal organization and administration of labor unions, with special attention to the impact on individuals of collective agreements requiring membership in unions as a condition of employment;

(4) the labor relations policies and practices of employers and associations of employers;

(5) the desirability of welfare funds for the benefit of employee and their relation to the social-security system;

(6) the methods and procedures for best carrying out the collective bargaining processes, with special attention to the effects of industry-wide or regional bargaining upon the national economy;

(7) the administration and operation of existing Federal laws relating to labor relations; and

(8) such other problems and subjects in the field of labor-management relations as the committee deems appropriate.

The purpose of the Committee, in making a thorough study and investigation of the entire field of labor-management relations, was to submit a report and recommendations for legislation, and the Act provided:

> The committee shall report to the Senate and the House of Representatives not later than March 15, 1948, the results of its study and investigation, together with such recommendations as to necessary legislation and such other recommendations as it may deem advisable, and shall make its final report not later than January 2, 1949. (Sections 401, 402, 403 of the Labor-Management Relations Act of 1947.)

The Joint Committee on Labor-Management Relations made its report to Congress in 1948 (Senate Report 986, Part 3, 80th Cong., 2d Sess., page 45) and embodied its conclusions with respect to the non-Communist affidavit requirement, as follows:

> The committee believes that the non-Communist affidavit provision has already demonstrated its effectiveness as an aid to unions and their members in their desire to drive the Communists from positions of power in labor organizations. Since that point having been established beyond argument, consideration should be given by Congress to perfecting the approach to the problem. Communists do not give up easily and have and will take quick advantage of any loopholes which appear in the law. Control of the labor movement has been the Communists' most effective means of gaining ultimate control of the government itself in many European countries.

> The committee wishes to emphasize as strongly as possible that in any consideration of amendments to this section, great care must be given to prevent litigation of the question in Board hearings. If the parties to Board hearings are permitted to question the veracity of the affidavit, or the fact as to it having been filed, records will be hopelessly overburdened with such proof. Board hearings must be confined to evidence going into merits of the case at hand if the Board is to carry out its real function of deciding unfair labor practice cases and determining bargaining representatives. The Board recognized this principle in *Lion Oil Co.* (15—R—2264) when it upheld the ruling of the hearing officer in his denial of the employer's motion to dismiss the petition since the record did not show the petitioning union had complied with the requirements of section 9 (f) and (h). The Board said that compliance is clearly for the Board to determine and its official records indicated that the union had complied.

In the *Lion Oil Co.* case mentioned and approved in the Committee's report (76 N. L. R. B., pages 565, 566), the Board had stated, in its decision:

> The Employer further contends that the petition should be dismissed because the Congress of Industrial Organizations, with which the Petitioner is admittedly affiliated, has not complied with the filing requirements of Sections 9 (f) and (h) of the Act. We have affirmed the hearing officer's denial of the motion to dismiss for the reasons detailed in *Matter of Northern Virginia Broadcasters, Inc.*, 75 N. L. R. B. 11.

The Employer also argues that, as the record does not affirmatively show that the Petitioner has complied with the requirements of Section 9 (f) and (h), the petition should be dismissed. In view of the language of those sections, however, precluding *the Board* from investigating any question concerning the representation of employees where the requirements have not been met, the matter of compliance is clearly one for the Board to determine in any manner suited to the circumstances. As the official records of the Board indicate that the Petitioner has complied with the requirements of those sections, the hearing officer's denial of the Employer's motion to dismiss was proper.[1]

In *National Labor Relations Board* v. *Postex Cotton Mills, Inc.*, 181 F. (2d) 919 (C. A. 5), it

[1] The decision in *Northern Virginia Broadcasters, Inc.*, referred to in the Board's decision in the *Lion Oil Co.* case, was summarized in the report of the Joint Committee on Labor-Management Relations, as follows:

"The issue was presented to the National Labor Relations Board in the case of *Northern Virginia Broadcasters, Inc.* (75 N. L. R. B. No. 2). Local 1215 of the International Brotherhood of Electrical Workers, AFL, had filed a petition for a collective bargaining election. Both local 1215 and the International Brotherhood of Electrical Workers had filed the required affidavits and had complied with the registration requirement. Pursuant, however, to the ruling of the general counsel, the regional director dismissed the petition because the officers of the parent AFL had not filed non-Communist affidavits and a registration statement. The union appealed to the Board to reverse the action of the regional director in dismissing the petition. The Board, acting on the appeal, in a divided opinion set aside the dismissal and reinstated the union's petition." (Senate Report No. 986, 80th Cong., 2d Sess., Part 1, page 11.)

was held that where officers of a parent union had not filed required non-Communist affidavits provided for in the National Labor Relations Act, the Board was not authorized to issue a complaint upon a charge filed by an affiliated union, notwithstanding that the officers of the affiliated union had filed the required affidavits. A contrary construction was reached in *West Texas Utilities Co.* v. *National Labor Relations Board,* 184 F. (2d) 233 (C. A. D. C.); and in *National Labor Relations Board* v. *Highland Park Mfg. Co.,* 184 F. (2d) 98 (C. A. 4), the court considered the two foregoing cases and agreed with the construction of the court in the *Postex* case. While the *Highland Park case* is cited by respondent as authority in the instant case, it is not here applicable for the same question is not before this court. The issue here is whether compliance with Section 9 (f), (g), and (h) of the Act are jurisdictional and must be shown before the Board has jurisdiction to proceed. Judge Parker, who wrote the opinion of the court in the *Greensboro Coco Cola Bottling Co.* case, *supra,* holding compliance not jurisdictional, as well as in the *Highland Park* case, was obviously of the view that the two cases were concerned with entirely different issues, with which conclusion we are in accord.

Respondent submits that the above-mentioned portion of the report of the Joint Congressional Committee on Labor-Management Relations is not persuasive of the interpretation to be given to the Act since this was not the committee that proposed its adoption, but, rather, one created by the Act itself; that the opinions rendered by such

committee are *ex post facto* and have no weight or significance in interpreting the provisions of the statute; and that its views, as set forth in its report, are not persuasive as to Congressional intent in the matter.

For the past fifteen years since its passage by Congress, the National Labor Relations Act has aroused perhaps more controversy than any statute enacted during that period. Continuous debates in Congress finally led to the amendment of the law, through the enactment of the Labor-Management Relations Act, known as the Taft-Hartley Act, in 1947. Congress at that time was deeply concerned with the manner in which the amended Act would operate and, accordingly, as mentioned above, the Act provided for the Joint Congressional Committee to carry on a continuing thorough study and investigation of labor-management relations, including the administration of the federal laws relating to labor relations, with the object of reporting back to Congress the results of its investigation, together with recommendations for further legislation on the subject. Among the members of such Joint Congressional Committee, it is to be noted, were Senator Taft and Representative Hartley, authors and sponsors of the Labor-Management Relations Act which bore their name. The report of the Committee was made in the first part of 1948; and since that time, there have been two national Congressional elections in which one of the principal issues was the Taft-Hartley Act.

Debates have continued with regard to this legislation both in the Senate and the House of Representatives; but no amendments have been

made by Congress with respect to the so-called compliance sections here in question. Under such circumstances, we consider this to be persuasive evidence of the adoption by Congress of the construction given the filing requirements here in question by the Board, in the *Lion Oil Co.* case, *supra*, which was set forth in the report of the Joint Congressional Committee. In fact, most reasonable inferences can be drawn that the construction of the statute contended for by the respondent in the *Lion Oil* case, like that contended for by respondent in the instant case, failed of Congressional approval. See *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294; *Missouri* v. *Ross*, 299 U. S. 72; *United States et. al.* v. *American Trucking Assns., Inc., et. al.*, 310 U. S. 534. Moreover, it is to be said that respondent's contention that compliance with the filing requirements must be shown before the Board has jurisdiction to proceed, is in conflict with the explanation given by Senator Taft to the Senate when he declared that under Section 9 (f) of the Act, the financial reports required to be filed by the unions were not to be available to the public.[2]

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[2] In explaining the bill, Senator Taft said: "The bill provides that unions must file financial reports on forms certified by the Secretary of Labor and furnish the reports to all of their members, and file a copy with the Secretary of Labor. Such reports are not open to the public, any more than corporation reports are open to the public; but they are open to inspection by the members, and they are also open to proper Government officials. There is no special provision, but they are not specifically provided to be open to the public" (93 Cong. Rec. 3839).

From the foregoing, it is our conclusion that it was not necessary to allege and prove compliance on the part of the union with the requirements of Sections 9 (f), (g), and (h) of the Act as a condition precedent to the exercise of jurisdiction over the controversy by the Board. It may be remarked that, although the fact does not appear in the record, it is submitted by the Board that the American Federation of Labor, the parent union in this case, was in full compliance with Sections 9 (f), (g), and (h) of the Act prior to the issuance of the complaint against the respondent. But that is unnecessary to consideration in this case, in view of our holding that the Board was not required to allege and prove compliance, and that compliance with such provisions was not jurisdictional.

Having disposed of the foregoing jurisdictional question, we agree that it is unnecessary to pass upon petitioner's further contention that failure to comply with the above-mentioned filing requirements does not present a litigable issue in that they are administrative provisions not subject to review.

[Remainder of opinion relating to question whether there was sufficient evidence to sustain the Board's order, omitted.]

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No. 425

In the Supreme Court of the United States

OCTOBER TERM, 1950

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HIGHLAND PARK MANUFACTURING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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This reply brief is submitted primarily in answer to respondent's contention that the words "national or international labor organization of which it is an affiliate or constituent unit," as used in Sections 9 (f), (g), and (h), have the same meaning as the words "labor organization * * * affiliated with a labor organization national or international in scope," as used in the second proviso to Section 10 (c).

I

As we pointed out in our main brief, p. 100, when terms which have a technical meaning in

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labor relations parlance are used in the Act with reference to the structure or affairs of labor unions, they are to be given that meaning unless it clearly appears that Congress intended to attach another, and different meaning to the words. See *O'Hara* v. *Luckenbach S. S. Co.*, 269 U. S. 364, 370–371. This rule is applicable, we believe, to the phrase "national or international labor organization," which is a term of art in labor parlance, but not to the phrase "labor organization national or international *in scope.*" [Italics added.] The latter phrase, in which the words "labor organization" and "national or international" are transposed, and the qualifying words "in scope" are added, is completely unfamiliar to labor relations terminology.

If Congress had intended that the same meaning should be attached to this phrase as to the phrase "national or international labor organization" there is no reason to suppose it would not have used that phrase in Section 10 (c), rather than a new and different one. This seems particularly clear since, in view of the preceding language in Section 10 (c), the use of the phrase "national or international labor organization," would have been entirely appropriate from the standpoint of draftsmanship. The legislative history of the second proviso to Section 10 (c) shows, we think, that Congress chose a different phrase in that Section because the Section was directed

at an entirely different goal, and the term of art used in Sections 9 (f), (g), and (h) was not appropriate to express Congress' meaning.

The legislative history shows that the phrase "labor organization national or international in scope" was used in Section 10 (c) to refer to the A. F. L. and C. I. O., and only to them. Congress adopted the Section 10 (c) proviso to put an end to the Board's "admitted practice * * * of discriminating against independent unions, simply because they are independent, by ordering with respect to them more drastic penalties than it orders for unions affiliated with the A. F. of L. or the C. I. O. in similar circumstances." H. Rep. No. 245, 80th Cong., 1st Sess., p. 42. See also, S. Rep. No. 105, 80th Cong., 1st Sess., p. 26; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., pp. 54–55. Senator Taft made a similar, more elaborate, statement on the Senate floor. 93 Cong. Rec. 3838, Leg. Hist., pp. 1013–1014. He said: "The bill provides that [the Board] must give independent unions, * * * the same treatment that would be given a union affiliated with the AFL or the CIO. Numerous representatives

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[1] In the preceding sentence, Senator Taft had illustrated the favoritism which had been displayed toward local unions which affiliated with a national union which was in turn affiliated with the A. F. L. or C. I. O. He said: "If there be an AFL or CIO affiliate union which is company dominated, but which affiliates itself with the national AFL union, then the Board will permit it to purge itself promptly and will certify it as bargaining agent."

of independent unions appeared before the committee who told us how unfairly they had been treated. It was felt that theirs was a good case." Among the witnesses whom Senator Taft thus referred to was Joseph Beirne, who testified on behalf of the National Federation of Telephone Workers, an unaffiliated national union. Hearings before the Senate Committee on Labor and Public Welfare on the Labor Relations Program, 80th Cong., 1st Sess., pp. 1179, 1203, 1215. Senator Taft specifically mentioned that the "telephone union" was one which the new bill was designed to protect against unequal treatment.

The Board likewise explained its old policy and the Congressional purposes in adopting the amendment to Section 10 (c) as follows:[2]

> The Board did not, however, apply the full disestablishment remedy to employer-controlled or assisted labor organizations which were affiliated with a national or international federation. * * * This difference in treatment, as between affiliated and non-affiliated organizations, was based upon the Board's belief that a labor organization affiliated with a national or international federation that was outside the ambit of the employer's control could not be permanently and completely subjugated to the will of the employer. * * *

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[2] *Carpenter Steel Company*, 76 N. L. R. B. 670, 671-672 (decided March 16, 1948).

> This proviso [to Section 10 (c)] constitutes, in effect, Congressional rejection of the Board's prior view that mere affiliation with a national federation places a labor organization in such a different position from an organization not so affiliated as to warrant the use of different remedies when employer assistance or control has been found.

The language chosen in Section 10 (c), as the Committee Report states (H. Conf. Rep. No. 510, 80th Cong., 1st Sess.), p. 55, "covers the specific abuse which has come to the attention of Congress." In the light of this legislative history it appears that Congress intended to give equal treatment to all local unions which were alleged to be company dominated or assisted. And it appears that by the words "affiliated with a labor organization national or international in scope" Congress intended to refer to the A. F. L. or C. I. O., with which such a local might be affiliated, either directly or indirectly.[3]

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[3] It seems likely that Congress used the term "labor organization" rather than the word "federation" because the C. I. O. does not use the word "federation" in its name. Compare the use of the words "labor organization" rather than "union" throughout the Act. Main Brief for the Board, pp. 107–108, note 41. This terminology also required that both the words "national" and "international" be used. For while the A. F. L. and the C. I. O. are regarded as "national" federations, when the "scope" of their activities is referred to, as in Section 10 (c), they may conceivably be thought of as "international," since some unions affiliated with the C. I. O. and the A. F. L. have locals in Canada.

Thus, Congress did not conceive of the phrase "labor organization national or international in scope" as referring at all to the national or international unions. Affiliation with a national or international union, the Telephone Workers, for example, was irrelevant to the Board's policy which Congress intended to reverse. That policy, as the Board pointed out in the *Carpenter Steel* case, *supra,* turned entirely upon affiliation with a major federation, either the A. F. L. or C. I. O. It would therefore have been pointless to refer in Section 10 (c) to national or international unions.

It follows that the phrase "labor organization national or international in scope," as used in Section 10 (c), cannot have been intended by Congress to have the same meaning as the term "national or international labor organization" as used in Section 9 (f), (g), and (h). The latter term was unquestionably intended to refer to national or international unions; the only issue is whether it refers also to federations. In view of the legislative history, respondent's argument that since the federations were referred to in Section 10 (c) they must also have been referred to in Section 9 (f), (g), and (h), has no more validity than an argument that since the national and international unions are referred to in Section 9 (f), (g), and (h) they must also have been referred to in Section 10 (c).

Our contention is that whatever the purpose and legislative history of Section 10 (c) shows as to the meaning which Congress intended to attach to the non-technical phrase used in that Section, that purpose and legislative history are not relevant to the term of art which was used in Sections 9 (f), (g), and (h). To show that Congress did not use the term "national or international labor organization" in Sections 9 (f), (g), and (h) in its normal labor relations sense respondent would have to show, from the purpose and legislative history of those Sections, that Congress intended to attach a different meaning to that term. This respondent has not done, and we believe it cannot do so. Since the purpose of Congress in Section 9 (h), entirely unlike its purpose in Section 10 (c), was to apply the affidavit requirement only to those persons who were empowered by virtue of their union office to call political strikes "*without* advocacy or persuasion," *American Communications Association v. Douds*, 339 U. S. 382, 396, and since federation officers do not, by virtue of their federation office, possess or exercise such power over autonomous national or international affiliates, the affidavit requirement may not properly be deemed applicable to them.

II

With the Court's permission, we should also like to clarify the present compliance status of

the C. I. O. The records of the Board and th Secretary of Labor show that the C. I. O. cam into compliance on December 22, 1949; it is no in compliance. On the basis of documents a ready filed, the C. I. O. will remain in compliance with Section 9 (f) until September 30, 1951, a the earliest. On the basis of the affidavits pres ently on file, the C. I. O. will remain in compli ance with Section 9 (h) at least until Novembe 24, 1951. It could lapse from compliance prio to that time only if, in the interim, a new officer i elected and takes office without filing an affidavit

Respectfully submitted.

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vs.

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Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT AS TO THE CASE

One of the questions involved in this case is whether, under the National Labor Relations Act, as amended (61 Stat. 136; 29 U. S. C. 151 et seq.), the officers of the CIO must file the reports and "non-Communist" affidavits prescribed in Section 9 (f), (g) and (h) of the Act before a Union affiliated with the CIO may validly initiate a proceeding under the Act.

The Respondent agrees with the Petitioner that this is a question important in the administration of the Act. The Respondent further agrees that the ruling of the Court

below on this question in the present case, 184 F 2d 98, like the ruling of the United States Court of Appeals for the Fifth Circuit in the case of *National Labor Relations Board vs. Postex Cotton Mills*, 181 F 2d 919, is squarely in conflict with the ruling, by a divided court, on the same question in the United States Court of Appeals for the District of Columbia Circuit in the case of *West Texas Utilities Company vs. National Labor Relations Board*, 184 F 2d 233. The Respondent insists that the ruling on this question in the Court below and in the Postex case is right and that the ruling to the contrary in the West Texas Utilities Company case is thoroughly erroneous.

Irrespective of the foregoing, however, it is the Respondent's contention that certiorari should not be granted in the present case because there are other matters involved in this case upon which it is clear that the order of enforcement which the Board seeks should be denied. Although it might otherwise be appropriate to grant certiorari herein upon the non-Communist affidavit issue, still there is no occasion thus to review or disturb the decree denying enforcement below in view of the other aspects of this case which permit of no ultimate decree in this case save one denying enforcement. These other matters which dispose of the present case, irrespective of what is the proper ruling on the non-Communist affidavit question, are set forth in the following pages of this brief.

ARGUMENT

APART FROM THE NON-COMMUNIST AFFIDAVIT ISSUE THE BOARD'S ORDER IN THIS CASE SHOULD NOT BE ENFORCED AND THE DECREE BELOW HAVING DENIED ENFORCEMENT, CERTIORARI SHOULD NOT BE GRANTED

A. The Board's Order Should Not Be Enforced Because It Has Never Been Properly Determined Whether the Union Won or Lost the Election Which Was Held Among the Respondent's Employees.

The Board seeks in this case to compel the Respondent to recognize and engage in bargaining with the Textile Workers Union of America, CIO as agent of the employees in the Respondent's Rock Hill, South Carolina Plant. The Respondent has refused to do this upon the ground that it has never been properly ascertained whether the Union won or lost the election which was conducted by the Board for the purpose of determining the desire of the Respondent's employees on this subject.

The controversy which is here involved arose upon the refusal of the Board's Regional Director to count seven of the votes which were cast in the election. These seven ballots were determinative of the election and the central question in the case is whether in refusing to count these ballots the Regional Director acted in any respect unreasonably or arbitrarily.

It is undisputed that the Respondent agreed in advance to abide by the Regional Director's determinations on all questions "relating in any manner to the election." But the Board concedes that this did not mean that the

Respondent would abide, nor be bound to abide by, any unreasonable, arbitrary or capricious determinations nor any determinations arrived at by unreasonable, arbitrary or capricious means. (Board's brief in the Court of Appeals, P. 13, et seq). Despite the agreement for determinations by the Regional Director, still the issue, as the Board itself correctly states (Board's brief in the Court of Appeals, P. 14), is:

> "Whether the investigation was *fairly conducted* with the end in view of eliciting *all* of the pertinent facts and whether the determination was based upon a *fair appraisal* of those facts." (Emphasis supplied).

Adopting this language of the Board's the Respondent earnestly contends that the Regional Director's action in this case was unreasonable and arbitrary in two respects: first, in that his investigation was not "fairly conducted" nor reasonably adapted to "eliciting all of the pertinent facts"; and secondly, in that his determination was not based upon any "fair appraisal" of all of the pertinent facts. Otherwise expressed, it is the Respondent's contention that the Regional Director's action here was unreasonable and arbitrary: first, in respect to the *circumstances of his obtaining* facts and evidence bearing upon the employment status of the individuals in question; and secondly, in respect to the complete and obvious *incorrectness of his "finding"* as to the employment status of these individuals.

1. *The Procedure By Which the Regional Director Arrived At His Conclusion Was Unreasonable and Arbitrary.*

It would seem that upon so crucial an issue as was here at stake, involving as it did the entire outcome of the elec-

tion and the consequent application or non-application of the fundamental provisions of the Act, the Board would have regarded a full and regular hearing, affording opportunity for examination and cross-examination of witnesses and adversary searching of evidence, as the reasonable and proper procedure for determining the vital and disputed facts. It has indeed been recently held that such is the *only* fair, reasonable and proper procedure in a situation of this sort; and that irrespective of advance agreement authorizing the Regional Director to make determination, such is the procedure through which his determination must be arrived at.

National Labor Relations Board vs. Sidran
181 F 2d 671 (C. A. 5)
cf. *Morgan vs. United States*
304 U. S. 1; 82 L. Ed. 1129

and

National Labor Relations Board vs. Indiana and Michigan Electric Company
318 U. S. 9; 87 L. Ed. 579—in which this

Court said:

> "Courts which are required upon a limited review to lend their enforcement powers to the Board's orders are granted some discretion to see that the hearings out of which the conclusive findings emanate do not shut off a party's right to produce evidence or conduct cross-examination material to the issue."

National Labor Relations Board vs. Capitol Greyhound Lines, 140 F. 2d 754 (C. A. 6) and *National Labor Rela-*

tions Board vs. A. J. Tower Co., 329 U. S. 324, 91 L. Ed. 322, relied on by the Board, are inapposite for in both those cases it affirmatively appears that the Board's Regional Director did conduct a hearing such as the Respondent here sought in vain. In *National Labor Relations Board vs. Capitol Greyhound Lines*, for example, it is noted that:

> "Formal hearing by the Regional Director was had on these objections, testimony of witnesses was adduced, documentary evidence received and a transcript of the proceedings preserved."

In the present case, however, it would seem not necessary for the Court to decide whether it agrees with the ruling of the Sidran case requiring a full and formal adversary hearing even where there is no understanding on the part of the Respondent that there is to be such a hearing. For here there is the additional element that the Respondent did reasonably understand that it would be afforded opportunity to make a full presentation of all pertinent facts, and relying upon that understanding, the Respondent failed to make, and did not in any way try to make, such presentation at the time of the conversation or interview with the Board's Field Agent on the morning after the election.

T. W. Church, the Respondent's General Manager, the only witness who testified on this subject and whose testimony is undenied and uncontradicted, says:

(R. 117) "Well, the day after the election, the night of the election I should say, Mr. Joy asked several of us to meet in our office the next morning to discuss

these challenged votes. We went down there and had a short talk with him . . .

"And we left with the understanding that we would be allowed to present evidence and facts to the Labor Board in regard to them (the individuals in question) . . ."

"Q. On that occasion did you request opportunity to present the facts and the evidence or not.

A. Yes, sir."

. . .

(R. 118)

"Q. Did you understand that you were then and there being given such opportunity?

A. Well, I understood we would be given opportunity."

. . .

"Q. State to the best of your recollection what was said in regard to your request to have opportunity to present the facts and the evidence in regard to the eligibility of these seven people.

A. Well, I can't remember the exact words, but I asked that we be given the opportunity to present the complete facts and the complete picture to either the Board or whoever it was necessary."

. . .

"Q. Now, irrespective of what you think, will you state what was the substance of what he communicated to you on whether you would or wouldn't have an opportunity.

A. Well, he said we would have, or words to that effect.

Q. Would have what?

A. Opportunity to present the facts.

Q. All right. Now, did you, on that occasion, at that meeting, present the facts or not.

A. No, sir. We didn't go into any detail at that time.

Q. Has the Company ever been given an opportunity to give facts and evidence in regard to the—in regard to whether or not the seven persons you refer to were or were not employees of the Rock Hill plant.

A. No, sir."

. . .

And on cross-examination:
(R. 123)

"Q. Mr. Church, you said the night of the election Mr. Joy called a meeting for the next morning?

A. He just asked that we meet the next morning. He wanted to ask us some questions about these girls."

. . .

(R. 124)

"Q. But you say you didn't go into any detail at that time.

A. No, sir. It was our understanding that we would later have a chance to put the facts before the Board in Atlanta. That he was up there to run the election."

(R. 126)

"Q. And you say you have never been given an opportunity to present the facts since that time.

A. No, sir."

(R. 126)

"Q. Did you, at any time, from May 2 until May 29, seek to send to the Regional Director any of this evidence you claimed bore on the status of the challenged persons.

A. I don't remember that we did. We didn't hear anything from them. It was our understanding that we would have an opportunity to do this."

(R. 128)

Well, Mr. Blakeney wasn't down there during the election, and when these votes was challenged, nobody knew they would be challenged because they were employees of the Company. Now, when Mr. Joy asked for this meeting the next day, we merely asked Mr. Blakeney to come down to listen to what was going to happen so he could help us to get together the facts and present them to the Board later. I don't remember Mr. Blakeney taking much part in it as a matter of fact. He was more or less listening so he could help us later. We weren't trying to present all the facts. Up to that time, up to the time they had been challenged it had been our position—rather there was no question in our mind, but what everybody on the payroll of April 12 should vote with the exception of the overseers."

TRIAL EXAMINER MARX: And my understanding is that you explained that position to Mr. Joy?

A. Yes, sir."

. . . .

(R. 129)

"Q. Did the questions put to you by the Board's representative cover the whole situation with respect to these girls or not.

A. No, sir.

Q. Did you ask for an opportunity to present the whole situation with respect to these girls being or not being employees?

A. I did."

Thus, the sum and substance of the situation was that when representatives of the Company met after the election with the Board Agent who had conducted the election, they did so without any expectation of presenting, and without any preparation for presenting, the facts and evidence necessary to depict in reasonable completeness the employment status of the persons in question. On the occasion of this conversation or interview with the Board Agent, the Company representatives answered such questions as occurred to him to ask them, in so far as they were then able to do so. They made no effort to develop or even to delineate the total picture bearing upon the matter at issue. And they departed with the understanding that they would be afforded the opportunity to do so before the making of any final decision on the challenged votes. No witness testifies or claims that the truth of the matter was anything other than this.

2. The Conclusion which the Regional Director Arrived At Was Unreasonable and Arbitrary.

Apart from all of the foregoing and irrespective of how the Regional Director arrived at his conclusion, the conclusion he did arrive at is thoroughly arbitrary. His "finding" that the individuals in question were not employees of the Respondent's Rock Hill Plant was an ex parte declaration bearing no reasonable relation to truth and reality.

The evidence which the Respondent would have presented to the Regional Director had it been afforded the opportunity, and the evidence tendered by the Respondent at the hearing in this proceeding and rejected by the Board's Trial Examiner as immaterial, since the Board's Regional Director had made his determination, was as follows (R. 133-142):

In the Spring of 1946 the Respondent's Rock Hill Plant was being changed from a "plain goods" to a "fancy and striped goods" mill. This change in the nature of the product of the Plant necessitated the hiring of additional "draw-in" or "drawing-in" hands, the "drawing-in" operation being one requiring special aptitude and experience, particularly in fancy and striped goods production. The management of the Rock Hill Plant, after diligent inquiry had been unable to locate any drawing-in hands in Rock Hill or the vicinity.

In the Spring of 1946 the Respondent's Charlotte Plant, which manufactured principally fancy and striped goods, was installing automatic drawing-in machinery which was diminishing the need of the Charlotte Plant for drawing-in hands and which had already resulted in a large proportion

of the Charlotte Plant drawing-in hands being on short-time work.

Such being the situation, the Superintendent of the Rock Hill Plant, after discussing the foregoing circumstances with the Superintendent of the Charlotte Plant, about the middle of March, 1946, which incidentally was before there had been any sort of request or claim for recognition or certification on the part of the Union, communicated with four of the drawing-in hands at the Charlotte Plant and asked them if they would be willing to come to work as drawing-in hands at the Rock Hill Plant. All four stated that they would like to do so. Thereupon they quit their employment at the Charlotte Plant and hired as employees at the Rock Hill Plant, the date of their commencing work at the Rock Hill Plant being March 25, 1946. Thereafter four other drawing-in hands at Charlotte, hearing of this and being aware of the circumstances outlined above, on their own initiative communicated with the Superintendent of the Rock Hill Plant, became hired as drawing-in hands at the Rock Hill Plant, quit their jobs at Charlotte and began to work at the Rock Hill Plant on April 1, April 1, April 6 and April 8 respectively. Even after the election, on May 1, the same process continued, two drawing-in hands from the Charlotte Plant, on May 6, similarly communicating with the Superintendent of the Rock Hill Plant, becoming hired and thereupon quitting their jobs at the Charlotte Plant.

These women upon quitting their jobs at the Charlotte Plant severed all connections of every nature with that Plant and retained no relations of any kind with it. They were taken off the payroll of the Charlotte Plant and regular employment severance cards were made out and

filed for all of them. The employee insurance which they had been carrying with the Charlotte Plant was cancelled and terminated and on all reports and records kept by the Charlotte Plant, such as, Federal Social Security and North Carolina State Unemployment Compensation records and reports, their names were dropped and they were reported as no longer employees.

As soon as they became hired and commenced working at the Rock Hill Plant, these women were put on the payroll there, became listed and shown as employees of the Rock Hill Plant on all forms, records and reports, such as Federal Social Security and South Carolina State Unemployment Compensation records and reports for that Plant. Likewise, the Rock Hill Plant began to pay workmen's compensation insurance premiums for these persons as its employees. And, despite the Board's statement to the contrary (Board's brief in Court of Appeals, P. 6) these individuals were offered the opportunity of participating in the life, hospital and medical insurance plan at the Rock Hill Plant along with all other employees there and on exactly the same terms as any other newly hired employee, and they accepted and applied for such insurance at the Rock Hill Plant.

The individuals in question have participated in all wage increases and other benefits, along with all other employees of the Rock Hill Plant, since they commenced working there. They engage in social activities and have all other normal interests in common with the other employees of the Rock Hill Plant. They receive all notices and other communications which the Rock Hill Plant sends to its employees generally.

Since these ten women commenced to work at the Rock Hill Plant in the Spring of 1946, they have worked there regularly ever since, except that one of them quit on August 2, 1946, and another quit on September 15, 1946. Each of these two who quit then applied to be hired as drawing-in hands at the Charlotte Plant but were refused because of the diminished need for drawing-in hands there, as hereinabove mentioned. And neither of these two has ever worked at the Respondent's Charlotte Plant since she quit work at the Rock Hill Plant.

These individuals have seen fit to keep their homes in Charlotte and ride to Rock Hill each working day, but their homes in Charlotte are their own and are not property that the Respondent, or its Charlotte Plant, have any connection with whatever. Likewise various other employees of the Rock Hill Plant have homes away from Rock Hill and travel to their work in the Rock Hill Plant distances as great as that from Charlotte to Rock Hill.

The individuals in question are the only employees at the Rock Hill Plant who can perform the drawing-in work on the fancy and striped goods there and for this reason the Rock Hill Plant pays them more than its other drawing-in hands, of whom there are only two, including pay for the time spent in travelling to and from their homes in Charlotte. The Company was willing, and is willing, to pay these ten women, now eight, on this higher basis because such were the rates they demanded upon becoming hired at the Rock Hill Plant and such were the rates that the Rock Hill Plant decided to pay them in order to procure their very necessary services.

That the matters above set forth were the true facts and circumstances bearing upon the employment status of

the persons in question is not contradicted or denied by any witness. The Board takes the position, however, that it makes no difference whether these were facts or not. For, says the Board, the Regional Director's conclusion is final *"unless arbitrary."* But the point is that if these be the facts, then the Regional Director's conclusion *is arbitrary* on its face—apart from the matter, earlier herein discussed, of arbitrariness in his method of arriving at such conclusion.

Under the "consent election" agreement, the only issue before the Regional Director was whether the individuals in question were "employees at the Company's Rock Hill, South Carolina Plant who appear on the Company's payroll for the period ending April 12, 1946" (R. 96). It was undisputed that the names of these persons did appear on the payroll of the Rock Hill Plant for the period ending April 12, 1946.

The Regional Director's ruling thus became reduced to the one proposition that these individuals were not "employees" at the Rock Hill Plant. He could not very well deny that they were employed and that they were "employees" somewhere. Hence his ruling, despite all the facts above set forth, was that these persons were not employees at the Rock Hill Plant but were employees at the Charlotte Plant!

Taking the facts to be as set forth above, and since no witness contradicts or denies them, they must be so taken, the Regional Director's pronouncement that the persons in question were employees at the Charlotte Plant and were not employees at the Rock Hill Plant was arbitrary, and nothing short of arbitrary—and no more entitled to binding effect than if he were to "find" that a cow is a

horse. He could just as readily declare that he had decided that weavers or spinners at the Rock Hill Plant were not "employees" there and hence not entitled to vote.

It is respectfully submitted that the agents of the Board have no power thus arbitrarily to "determine" the outcome of employee elections and that they acquire no such power from an agreement for a "consent election."

B. ALLEGED MEMBERSHIP CARDS AND A PETITION OBTAINED BY THE UNION AFTER THE ELECTION CANNOT ALTER THE RESULT

The Board contends that irrespective of whether the persons in question were employees at the Rock Hill Plant and irrespective of whether a majority of the employees voted for the Union or against the Union, the Respondent was nevertheless legally bound to recognize the Union because of designation cards which the Union told the Company in September, 1946, it had obtained and because of an employee petition mailed to the Company by the Union on April 12, 1947.

As to this it is first to be noted that the general rule is that an employer is not required to recognize a Union upon its presenting what purports to be an employee petition or upon its offering to allow some third party to check "designation" cards. The rule is rather that the employer is entitled to insist on the more accurate and dependable method of ascertaining the free wishes of his employees by a secret ballot election.

In the matter of Roanoke Public Warehouse.
72 N.L.R.B. 1281.
19 L.R.R.M. 1267.

Here the Respondent had no reliable means of knowing whether all, or how many, of the signatures on the cards and the petition were genuine and, even more importantly, it had no means of knowing to what extent misrepresentation or undue influence and coercion may have been a factor in the obtaining of the signatures. The Respondent informed the Union that it had these misgivings in regard to the cards and the petition (R. 120-122).

As to the first of these considerations, the Board blithely declares that the Company could not have had any bona fide doubts or, if it had, they could readily have been resolved. The further consideration, that is, the possibility of misrepresentation, pressure and coercion in the obtaining of signatures, the Board does not even advert to.

The Respondent was, of course, not free to undertake any direct investigation among its employees on either of these matters. Enough miscellaneous information did come to its attention, however, to illustrate the reasonableness, in this instance, of the general rule that the employer is not legally required to accept such cards and petitions at their face value. One employee stated (R. 106-107) that she signed a Union card not because she wanted the Union to represent her but solely in order that she might "run (her) job in peace." Another testified (R. 107) that when he signed the Union card he did not know he was joining the Union but thought he was signing "not to strike." Another stated (R. 108-111) that the "only reason" he signed a Union card was to stop

nails being thrown in his driveway. One employee testified (R. 107) that he did not sign a Union card at the time the card purported to show he signed. And another declared (R. 112) that he did not sign in the presence of a witness whom the card purports to show as a witness.

Two employees testified (R. 104) that they did not sign the petition in the presence of the notary public, whose certificate on the petition stated that all persons signed had done so in his presence. Further, in this connection, it is to be noted (R. 102-104) that of numerous notaries public readily available in the community the Union selected one who was on two of its committees, gave him a list of names with instructions to go around and "see" everybody on the list; that "about half" of the persons who signed did so at the Union commissary; that this notary public "had to chase the others down," until the Union told him he had "got enough of them anyway."

And the general dependability of the petition was, of course, further to be discounted in view of the fact that it was gotten up in the midst of a strike and among all the circumstances of pressure and tension usually attendant upon such resort to "economic strength."

Finally, as to the Respondent's legal duty to recognize the Union upon the cards and the petition it is to be noted that the Board usually insists that an election settles the question of duty to bargain or not to bargain for a reasonable length of time and that upon a majority of an employer's employees voting for a Union, he must recognize and bargain with that Union for a substantial length of time despite any showing of change in the employees' wishes during that time. cf. *National Labor Relations Board vs. Highland Park Manufacturing Company*, 110

F. 2d 632 (C. A. 4); *Great Southern Trucking Company vs. National Labor Relations Board,* 139 F. 2d 984 (C. A. 4).

Is not the converse then equally true, that if a majority of the Respondent's employees voted against the Union on May 1, 1946, then no other or different showing, by cards, petitions or the like, could quickly alter the Union's non-majority status as established by the election. The Respondent was entitled to insist upon whatever might be the status established upon a proper count of the election ballots. And the Respondent made it clear that it would, as would be its duty, conform to and abide by the outcome of such election count. As to this T. W. Church testified (R. 117):

> "We told them this:—We told both the Union representative and the Board representative that if they would count those votes, that we would abide by the decision and if it was in favor of the Union, we would bargain. And we were led to believe that they would be counted."

C. MOREOVER, THE BOARD'S DELAY IN THIS CASE HAS BEEN SUCH THAT ENFORCEMENT OF ITS ORDER SHOULD BE DENIED

It is now almost five years since the election among the Respondent's employees was held. The Union initiated this proceeding by filing its charge against the Respondent on September 13, 1946. From then on the way was open for the Board to issue a complaint and expeditiously bring this matter to a head. But for almost two and one-half years, and until January 10, 1949, it delayed in even

issuing a complaint. In any reasonable view it would have seemed that the case "was dead" (R. 122).

Meantime, and until the Board moved against the Respondent, there was no means available to the Respondent to obtain adjudication of the question at issue. cf. *National Labor Relations Board vs. Norfolk Ship Building & Drydock Corporation*, 172 F. 2d 813 (C. A. 4).

The Respondent respectfully suggests that the Court will not be inclined to affirm by its decree the agency authority of a Union where there is not only serious controversy as to whether it ever was agent but where there has also been so much unnecessary delay on the part of those who belatedly seek the Court's decree.

The situation is not one in which the Respondent seeks to show to the Court that its employees no longer desire to be represented by the Union. cf. *National Labor Relations Board vs. Highland Park Manufacturing Company, supra and Great Southern Trucking Company vs. National Labor Relations Board, supra*. The question here, in the first instance, is whether the employees ever did desire to be represented by the Union. And the Respondent is further simply pointing out that any registration of sentiment almost five years ago, whether for the Union or against the Union, is now so old and stale as to constitute no basis of an order "appropriate for present enforcement." *National Labor Relations Board vs. Norfolk Ship Building & Drydock Corporation, supra*. As is said by the Court in *National Labor Relations Board vs. Eanet*, 179 F. 2d 15 (C. A. D. C.):

> "Entry of decree unrelated to present reality is not countenanced by our jurisprudence. In an ordi-

nary lawsuit of the magnitude of the case at Bar, we venture to say that no Court would enter a mandatory or injunctive decree on data two years old."

Upon all of the foregoing it is submitted that enforcement of the Board's order should not be granted in this case; and such enforcement having been denied below, that denial should not now be disturbed by the issuance of a writ of certiorari.

Respectfully submitted,

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Counsel for the Respondent

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

NO. 425

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

HIGHLAND PARK MANUFACTURING COMPANY
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR HIGHLAND PARK MANUFACTURING COMPANY

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BRIEF FOR HIGHLAND PARK MANUFACTURING COMPANY

ARGUMENT

I

WHEN A LABOR ORGANIZATION AFFILIATED WITH THE C. I. O. FILES A CHARGE WITH THE NATIONAL LABOR RELATIONS BOARD, NO COMPLAINT MAY BE ISSUED THEREON UNLESS THE OFFICERS OF THE C. I. O. HAVE COMPLIED WITH THE REQUIREMENTS OF SECTION 9 (h) OF THE NATIONAL LABOR RELATIONS ACT AS AMENDED

Section 9 (h) of the National Labor Relations Act as amended stipulates that:

> ". . . no complaint shall be issued pursuant to a charge made by a labor organization . . . unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party (and does not have the proscribed associations or beliefs)."

Thus, it is specifically directed that if a labor organization filing a charge is affiliated with or is a constituent unit of "any national or international labor organization," then the officers of such "national or international labor organization," as well as the officers of the labor organization making the charge, must fulfill the non-communist affidavit requirements—otherwise the issuance of a complaint by the Board is expressly forbidden.

The charge in this case was filed by "Textile Workers Union of America, CIO." [1] It is undisputed that Textile Workers Union of America is a labor organization within the meaning of Section 9 (h) of the Act and that its officers have been in compliance with the requirements of Section 9 (h) at all times pertinent to this case. It is further undisputed and conceded by the Board that Textile Workers Union of America is and at all times pertinent to this case has been "affiliated" with the C. I. O. (Board's Petition, p. 2 and 3 and Board's Brief p. 18). Likewise, it is undisputed and conceded by the Board that at the time the complaint was issued in this case and at all times prior thereto the officers of the C. I. O. had failed to comply with the requirements of Section 9 (h) of the Act (Board's Petition p. 2 and 3 and Board's Brief p. 18).

Since, therefore, the charging Union was admittedly affiliated with the C. I. O. and since the officers of the C. I. O. admittedly had not complied with the requirements of Section 9 (h), the only question in the case is whether the C. I. O. was a "national or international labor organization"—it being undenied that in such situation the officers of a "national or international labor organization" would be required to comply.

The state of the decisions on this question is as follows. The Court below in the present case, *National Labor*

---

[1] In the space provided in the charge for the "Full name of labor organization or person filing charge," the filing organization wrote the name set forth above, that is, "Textile Workers Union of America, C. I. O." and by such name it has been known and designated throughout all the proceedings in this case.

Relations Board vs. Highland Park Manufacturing Company, 184 F. 2d 98, the United States Court of Appeals for the Fifth Circuit in *National Labor Relations Board vs. Postex Cotton Mills,* 181 F. 2d 919, and the United States District Court for the Northern District of Texas in *Oil Workers Union vs. Elliott,* 73 F. Supp. 942 have all held that the C. I. O. is a "national labor organization" within the meaning of Section 9 (h) of the Act. The National Labor Relations Board has ruled to the contrary, though against the opinion of its General Counsel and with one member dissenting, *Matter of Northen Virginia Broadcasters,* 75 N. L. R. B. 11. So also has the United States Court of Appeals for the District of Columbia, with one Judge dissenting, in *West Texas Utilities Company vs. National Labor Relations Board,* 184 F. 2d 233.

A. *The Provisions of Section 9 (h) Are Unambiguous and Its Purpose and Intent Is Clear.*

Is, or is not, the C. I. O. a national or international labor organization? A natural use of common knowledge and the English language would indicate nothing other than an affirmative answer to this question. Certainly it would not occur to the average person to deny that the C. I. O. is a labor organization and that it is national in its scope and operation and is, therefore, a national labor organization.

This Court has itself so identified and referred to the C. I. O., that is, as "a national labor organization." *C. I. O. vs. McAdory,* 325 U. S. 475. As concisely stated by the Court below in the present case "The C. I. O. is unquestionably a national labor organization," and as likewise pointed out by the Court of Appeals in the *Postex* case:

"To determine that the C. I. O. does not come within the terms of the Statute would require us to overlook the realities and substance of its objectives and operations."

Since, however, the Board presents elaborate argument to the effect that the C. I. O. is not, except in certain situations which will be hereinafter discussed, a "national labor organization" within the meaning of the Act, it becomes necessary to consider analytically and in detail whether the phrase as used in the Act is intended to cover and include an organization such as the C. I. O.

In making such an analysis, it is first important to consider the purpose and the end sought to be accomplished by the enactment of Section 9 (h) of the Act. As to this there can hardly be any dispute. This Court has already considered what the objective of Congress was in enacting Section 9 (h).

"Substantial amounts of evidence were presented to various committees of Congress, including the committees immediately concerned with labor legislation, that Communist leaders of labor unions had in the past and would continue in the future to subordinate legitimate trade union objectives to obstructive strikes when dictated by Party leaders, often in support of the policies of a foreign government. And other evidence supports the view that some union leaders who hold to a belief in violent overthrow of the Government for reasons other than loyalty to the Communist Party likewise regard strikes and other forms of direct action designed to serve ultimate revolutionary goals as the primary objectives of labor unions which they control. . . .

"It is sufficient to say that Congress had a great mass of material before it which tended to show that Communists and others proscribed by the statute had infiltrated union organizations not to support and further trade union objectives, including the advocacy of change by democratic methods, but to make them a device by which commerce and industry might be disrupted when the dictates of political policy required such action."

C. I. O. vs. Douds, 339 U. S. 382,
70 S. Ct. 674, 94 L. Ed. 925.

In Congress the Leader of the House declared that the purpose of this enactment was:

". . . to deal with the matter of Communist domination and *leadership* in unions (emphasis supplied)."

93 Cong. Rec. 6382,
June 4, 1947.

In the Senate similarly the evil sought to be remedied by Section 9 (h) of the Act was expressed as follows:

"Therefore, those who are really Communist are not loyal to our country. *If they rise to positions of power as officers* in labor organizations, then, with the law that we enact, investing certain powers in labor organizations . . . we are simply placing the power and authority and the sanction of law behind men who are in those positions . . ." (emphasis supplied).

93 Cong. Rec. 4894,
May 9, 1947.

The Board concedes that:

> "The compliance provisions disclose a Congressional policy of seeking to eradicate Communist *leadership* from labor organizations." (emphasis supplied).
>
> *New Jersey Carpet Mills, Inc.*, 92 N. L. R. B. No. 122.

Even in its opinion in the *Northern Virginia Broadcasters* case the Board stated that in enacting Section 9 (h) it was the purpose of Congress:

> "To eliminate Communist influence from the labor movement of the United States."
>
> *Matter of Northern Virginia Broadcasters*, 75 N. L. R. B. 14.

Yet the Board argues for an interpretation of Section 9 (h) which faces exactly in the opposite direction from what it admits to be Congress' basic purpose and intent. In seeking to eliminate the powerful head organizations like the C. I. O. and A. F. L. from the general coverage of Section 9 (h), the Board so alters its statement of Congress' intent that it should read instead to the effect that the purpose of Congress was "to eliminate Communist influence from the labor movement of the United States—except at the top!"

On the contrary it was most certainly the purpose of Congress to eliminate Communist influence from the labor movement wherever it might be found—whether at the top, bottom or at intermediate stages. As is well stated by the Court of Appeals in the *Postex* case:

"We think the language of the Statute, considered in the light of Congressional purpose, the evil to be remedied and the means provided to effectuate that purpose, evidence Congressional intent to wholly eradicate and bar from leadership in the American labor movement, *at each and every level*, adherents to the Communist Party and believers in the unconstitutional overthrow of our Government." (emphasis supplied).

National Labor Relations Board vs. Postex Cotton Mills, 181 F. 2d 919, 920.

Indeed it would seem that the high levels of power and influence[2] in the labor movement are the realms in which it would be most important for the provisions of Section 9 (h) to operate in order to effectuate the intent of Congress. As ably expressed by the Court below:

"In the light of this purpose, it is perfectly clear that it is much more important to exclude communists and others plotting the overthrow of the government by force from holding office in the great national labor organizations such as the C. I. O. and the A. F. L. than to exclude them from office holding in their affiliates; and it is not reasonable to suppose that Congress did not intend the officers of the former to be covered by its provisions. It is true that it is the officers of the affiliates who call the strikes; but it is the officers of the national or parent organizations

[2] The manner and extent to which the C. I. O. and A. F. L. do determine, guide and participate in the policies, functions and activities of their affiliated labor organizations is hereinafter developed.

who shape labor policies that cause the strikes to be called, and this is particularly true of general strikes or strikes having a political purpose."

National Labor Relations Board vs. Highland Park Manufacturing Company, supra.

To the same effect was the dissenting opinion of Board Member Gray in *Northern Virginia Broadcasters, supra:*

"The officers of the A. F. L. and the C. I. O. have been recognized as the spokesmen and representatives of organized labor in this country. It was the A. F. L. Executive Council which recommended on December 15, 1941, that 'a no-strike policy shall be applied in all war and defense . . . industries.' On the following day, the conference of A. F. L. presidents adopted this recommendation.

"The extent of the influence wielded by the A. F. L. is also apparent from the control which it exercises over the 'jurisdiction' of its member unions. Awards of the governing body may be subject to enforcement through expulsion from the organization. Conversely, the member unions exercise a measure of control over their parent organization through the election of its officers.

"It is therefore apparent that the A. F. L. may exercise direct and influential control over its constituent unions in important respects and that A. F. L. officers occupy a strategic position to affect the economic life of the Nation. Under these circumstances, it is inconceivable that Congress was not concerned

with the Communist affiliation of the officers of the A. F. L. and C. I. O. in accomplishing its intended purpose of purging labor of Communist influence."

In short, is it reasonable to suppose that Congress was deeply concerned with ferreting out union officers who might be Communists at all lower levels no matter how remote or obscure but that Congress had no interest at all in whether Communists occupied high positions of power and influence in the labor movement?

To this the Board replies with the paradoxical argument that to require the officers of the C. I. O. to file non-communist affidavits would tend to defeat rather than to serve Congress' purpose, for if any one of them failed to make such affidavit, then all the labor organizations affiliated with the C. I. O. would thereby be deprived of the machinery and procedures provided by the Act and such affiliated organizations would, therefore, lose all incentive to comply themselves.[3] It is respectfully submitted that a much more reasonable and likely sequence would be that the affiliated labor organizations, if they sufficiently desire to avail themselves of the benefits provided by the Act, would bring such pressure to bear upon the recalcitrant

[3] Just as truly, of course, hundreds of local unions and many thousands of members belonging to any one of the large national or international unions, such as Textile Workers Union of America, would be in the same manner deprived of the machinery and procedures of the Act upon failure of any officer of such union to comply with the requirements in question. But the Board of course does not deny that Congress nevertheless imposed the requirement in such situation—Congress evidently considering that the pressure thus engendered would not thwart, as the Board contends, but rather would serve the purpose of the Statute.

C. I. O. officer that he would either comply with the requirements of Section 9 (h) or be removed from his position[4] thereby accomplishing exactly what Congress was seeking to accomplish.[5] This is well summarized by the Court below as follows:

> "If the statute is construed in accordance with its express language to deny governmental support to unions that are affiliated with national organizations which refuse to comply with its anti-communist provisions, the result will be either that the national organizations will comply with the statute, or that they will be segregated from the effective body of loyal American labor by the withdrawal of their affiliates. In either event, the labor movement will be effectively protected from the danger of communist

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[4] In this connection it might be noted that the Joint Committee on Labor-Management Relations reported to Congress in 1948 that "in many instances unions have taken decisive action to compel reluctant officers to comply with the filing requirements." S. Rep. No. 986, 80th Cong. 2nd Sess. Pt. 1, p. 10-12.

[5] There is set forth hereinafter as Appendix II to this Brief an account, derived from the Preliminary Report of the Joint Committee on Labor-Management Relations, the Daily Labor Reporter and the Official Report of Proceedings of the American Federation of Labor, which shows that as a practical matter and contrary to the Board's present theorizing on the subject, the original ruling of the Board's General Counsel to the effect that the provisions of Section 9 (h) did extend to the C. I. O. and A. F. L. produced intense pressure for compliance upon the officers of those organizations from the constituent and affiliated unions and, whereas a "'show-down" between the anti-communist and the pro-communist unions was rapidly developing, the Board's reversal of its General Counsel's ruling immediately had the effect of eliminating all pressure towards such end.

leadership in the formulation of labor policies; and this is evidently the end to which the legislation was directed. We see no occasion to emasculate the statute by resorting to forced rules of interpretation when its language is perfectly clear and gives unqualified support to the purpose which Congress had in mind. The office of interpretation is to resolve ambiguities, not to create them."

National Labor Relations Board vs. Highland Park Manufacturing Company, supra.

As regards the purpose of Congress in enacting Section 9 (h) it is respectfully submitted that there can be no reasonable doubt but that Congress intended that Section as a means to help root Communism out of the labor movement and that it intended the Section so to operate at all stages and levels of all labor organizations throughout the land.

B. *The C. I. O. Is a "Labor Organization" Within the Meaning of the Act.*

The Board next says, however, that Congress in the phrase "national or international labor organization" failed to use words aptly describing or encompassing an organization such as the C. I. O. Pursuing this proposition the Board first points to the fact that "labor organization" is defined in the Act, Section 2 (5), and then contends that the C. I. O. does not meet that definition.

Section 2 (5) defines "labor organization" as "any organization of any kind . . . in which employees participate and which exists for the purpose, in whole or in part,

of dealing with employers concerning grievances, labor disputes (etc.)." The Board says that the C. I. O. is not such an organization. But it no sooner makes this contention than it modifies it to the effect that *most of the time* the C. I. O. is not a labor organization as thus defined. For the Board admits that in the large body of situations where the C. I. O. directly charters local unions, it is an organization "in which employees participate" and which deals "with employers concerning grievances, labor disputes (etc.)" and is, therefore, a labor organization within the definition of Section 2 (5). If the C. I. O. is thus somethimes a labor organization, it is difficult to see how the Board can deny that *it is* a labor organization. And certainly since the defining provision is that a labor organization "exists for the purpose, in whole or *in part*, of dealing with employers" and since the Board admits that the C. I. O. does in a substantial body of situations so deal with employers, the question would seem to be disposed of.

The Board disregards this, however, and points out that in most situations the C. I. O. does not directly charter local unions but an intervening national or international union, like Textile Workers Union of America, does so and is itself in turn affiliated with the C. I. O.; and the Board contends that in such cases employees do not "participate" in the C. I. O. and the C. I. O. does not exist "for the purpose, in whole or in part, of dealing with employers" and that, therefore, in such cases the C. I. O. is not a labor organization within the definition of Section 2 (5) of the Act. The answer to this is, however, that even where there is an intervening national or international union, like Textile Workers Union of America, between the C. I. O. and the local unions, still the truth and reality of the matter is that in such situation the employees do

"participate" in the C. I. O. and the C. I. O. does exist "for the purpose, in whole or in part, of dealing with employees."

In the case of *Congress of Industrial Organizations vs. McAdory*, 325 U. S. 472, 65 S. Ct. 1395, 89 L. Ed. 1741, the C. I. O. made allegations and produced voluminous evidence tending to establish among other things that, generally and without reference to directly chartered local union situations, employees do participate in the C. I. O. and that it does exist in very large part for the purpose of dealing with employers. Excerpts from the Transcript of Record on file with this Court in that case are set forth hereinafter as Appendix I to this Brief. The Record in that case discloses for example the following:

> "All Complainant unincorporated associations (which included the C. I. O.) are organizations and associations of employees, including employees working in the State of Alabama, and including employees working in Jefferson County, Alabama, in various trades, occupations and industries who have from time to time assembled and associated together and are assembling and associating together for the purpose of organizing themselves into voluntary and unincorporated associations and for the purpose of forming, joining and assisting their organizations so formed, including the complainants herein named, to bargain collectively through representatives of their own chosing and to engage in concerted activities for the purpose of collective bargaining and otherwise dealing with their employers concerning hours of employment, rates of pay, tenure or other terms or con-

ditions of employment, grievances of any kind relating to employment, and for other mutual aid and protection."

Appdx. I P. 3-4

* * *

"In the effectuation of the purposes aforementioned it is the necessary objective and practice of labor organizations and of the complainants herein mentioned (which included the C. I. O.) and their affiliates to negotiate and bargain with persons employing members of such organizations with respect to wages, hours, tenure, and other terms and conditions of employment of the members of said unions and pertaining to other matters affecting or threatening the economic standards and the mutual welfare of the members of said union and to arrive at mutual agreements embodied in collective bargaining contracts with said employers."

Appdx. I P. 5

* * *

"Q. What is your name?

A. John Brophy.

Q. Where do you live?

A. Washington, D. C.

Q. In what business are you engaged?

A. My present position is Director of Industrial Unions Councils, which is a central body of C. I. O.

Q. How long have you been connected with the C. I. O.?

A. Since its inception in 1935, December of that year.

Q. Have you devoted all of your time to C. I. O. work since its inception?

A. I have. I was Organizational Director from the inception of C. I. O. up to and including the year 1940, and from then on I have been Director of the Industrial Union Councils."

Appdx. I P. 7-8

* * *

"Q. Were you one of the organizers of the Committee for Industrial Organization?

A. Yes. I was one of the original Committee that set up the Committee for Industrial Organization."

Appdx. I P. 9

* * *

"Q. Now, as Director of Industrial Union Councils, have you been involved in directing organizing campaigns?

A. Yes, I have. My work has been to advise and counsel in that work.

Q. How about your participation and connection in collective bargaining agreements?

A. I have been engaged in large scale collective bargaining.

Q. In the making of the agreements and administration of unions after agreements have been made?

A. Yes."

Appdx. I P. 9

* * *

"Q. Now, as Organizational Director and Director of Industrial Councils for C. I. O. . . . have you been in constant touch with national and local unions, with labor unions affiliated with the C. I. O.?

A. I have been constantly in touch with all National unions as to their various activities, with particular reference, of course, to organizing work and also to the collective bargaining program.

Q. Have the officials brought in to you their problems and discussed them with you?

A. Yes.

Q. Have you in turn given them the benefit of your experience with other organizations, other locals, other unions?

A. I have.

Q. And the experience you gathered as a national official of the C. I. O.?

A. Yes."

Appdx. I P. 10

* * *

"Q. Could you give the Court a rough estimate of the International unions that are now a constituent part of members of the Congress of Industrial Organizations?

A. About thirty-five National and International Unions comprise the Congress of Industrial Organizations.

Q. How many members approximately would you say your organizations have?

A. Some six million members.

Q. Do they operate in practically every State of the United States, including the State of Alabama?

A. They do.

Q. Just what was the circumstances which gave rise to the Committee for Industrial Organizations and later the Congress of Industrial Organizations?

A. The necessity of establishing industrial unions that could pool together the strength and experience for the purpose of effectively advancing the work of organization and establishing collective bargaining. It was the conviction of the original group the industrial union type of this organization was best fitted to cope with modern industry. The development of industry the last score or more of years has been large scale, covering several or more states, and concentrating power in a given industry; and to effectively do the job of organizing and to be able to cope adequately at the bargaining table, it was neces-

sary to have a type of union, the industrial form of union, in order to cope with widespread corporate industrial organization of the employers.

Q. Would you say that the organization of the employers had become larger and more extensive in recent years?

A. Yes, very much so.

Q. From your experience, is it your judgment that such an organization as C. I. O. is a practical necessity in order that workmen, or the employees, may bargain with anything like approximate equality with employers in Alabama?

A. I do, yes."

Appdx. I P. 10-11

* * *

"Q. Now, is it the professed aim of the C. I. O. to organize not merely the employees of a particular plant but employees of all plants in a particular industry that are operating in the state?

A. It is to organize all the workers engaged in a particular industry."

Appdx. I P. 12

* * *

"Q. By balance of the two forces, you mean balance of bargaining power between the employee on one hand and the employer on the other hand.

A. That is right, of course, I may say this, that under present conditions, the war emergency, the C. I. O. has given a pledge to refrain from the strike

weapon; and the policy of the C. I. O. to observe that pledge of no-strike during the war, of course, that is made possible because of the fact there is an agency, the War Labor Board, to whom disputes, and the failure of settlement, to whom disputes between employer and employee may be submitted and adjudicated."

Appdx. I P. 12-13

* * *

"Q. Mr. Brophy, has it or not been the policy and custom of the C. I. O. to refuse to handle non-union material?

A. There have been many instances where they have refused to handle non-union material.

Q. Now, as an instrumentality or agency in union work and organization is the power and right to refuse to handle non-union material, and is the exercise of that power, a practical means of strengthening unions?

A. Yes, particularly in the initial stage of organizational activities and the early stages of relationship with the employer."

Appdx. I P. 13

* * *

"Q. And the individual member of that local is not himself a member of C. I. O.?

A. Yes; we are all members of C. I. O. It is just in the same sense you may be a citizen of Birmingham and the State of Alabama and a citizen of the United States, so I may be a member of a local

union that is affiliated with a National Union that is in its turn affiliated with the C. I. O. We have the overall membership, as it were, in this fraternity of local and national unions."

Appdx. I P. 14

* * *

"Q. C. I. O. distinguished from the constituent unions, maintains a treasury of its own, does it not?

A. Yes, it does.

Q. Does any of that money find its way into educational movements?

A. Yes, it does—into all the various educational activities."

Appdx. I P. 14

* * *

"Q. All right. Now then, among the services you render is assistance in negotiating collective bargaining contracts, isn't it?

A. That is true.

Q. Let me understand what function the national C. I. O. itself, as distinguished from its constituent unions, renders with respect to specific contracts for its members?

A. Certain unions may ask that the C. I. O. representative here in Alabama assist in the negotiating of agreements with certain concerns. They can call on our C. I. O. representatives here in the state, or they can confer with our national officers on the subject and ask for special assistance.

Q. All right. Now, you maintain a staff, do you not, to go around and assist in negotiating contracts?

A. We maintain a staff, some of them are stationed at certain places, and they are available, among other things, to assist in negotiations where such assistance is asked for.

Q. You have here in Alabama such men, do you not?

A. Yes.

Q. Can you put their names in the record, or some of them?

A. Well, for instance, Mr. Haigler is present, he is available for consultation and assistance in negotiations; and there may be others sent in from time to time. They are a changing force, some of our people.

Q. Do you have a field organization you send into various states as they are called for for that purpose?

A. Some of them are permanently located, and others are sent in from time to time, depending on the volume of work and other circumstances.

Q. Are those men paid out of the central treasury or the constituent union treasuries?

A. They are paid out of the central treasury, that is, the direct national representatives. In some of our other units, like the State Council, it would be paid out of the state treasury."

Appdx. I P. 14-15

* * *

"Q. It is the objective of the C. I. O. to make the same rates of pay applicable in Alabama as in Pennsylvania?

A. Yes. The union's objective is to get the same pay for the same class of work whether it be Illinois, Pennsylvania, Alabama or Tennessee. In other words, one worker with the same skill as another is entitled to the same rate of pay.

Q. You classify workers into classes determined by what they do and by their experience and skill in doing that thing?

A. That is right.

Q. The policy of the union is to see each man who falls within the same classification receives the same pay, regardless of the state it is performed in?

A. That is the general objective.

Q. Not only the general objective, it is the policy, isn't it?

A. Yes, sir, policy, objective and policy."

Appdx. I P. 16

* * *

"Q. And in addition to that, you carry on a great deal of organizational work?

A. I do."

Appdx. I P. 19

* * *

The A. F. L. stands in the same position as the C. I. O. with respect to the question of whether it is within the scope of Section 9 (h) and in a case companion to that referred to above it made allegations and presented proof similar to that of the C. I. O. Excerpts from the Transcript of Record on file with this Court in that case, *Alabama State Federation of Labor vs. McAdory*, 325 U. S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725, are likewise set forth in Appendix I of this Brief. In this latter case Mr. William Green, President of the A. F. L., made affidavit as follows:

> "The national office of the A. F. L. maintains several hundred regional representatives throughout the nation to assist in the uniform operations and policies of the A. F. L. and its affiliated unions. . . .
>
> "The national office of the A. F. of L. from time to time, upon request of the affiliated organizations, assigns, organizers to said affiliated organizations throughout the country in the organizing of workers in their organizing activities. Specific or general problems of each of the affiliated organizations of the A. F. of L. are frequently brought to the attention of the national officers of the A. F. of L. in order that they or their associates may assist said affiliated organizations in the solution of such problems.
>
> "The A. F. of L. is constantly being called upon to render financial assistance or to furnish personnel to assist its various affiliated organizations in their manifold activities both in terms of organizing, collective bargaining with employers, legislative work, and in all of their other activities and pursuits.
>
> "The national office of the A. F. of L., its officers and representatives, are in constant contact with the

affiliated organizations of the A. F. of L. and their local unions through the country and maintain a regular and steady flow of correspondence, communication, and personal contact through the regional representatives of the A. F. of L. with the personnel of all the affiliated organizations of the A. F. of L. and their respective local unions. The A. F. of L. conveys to the A. F. of L. Unions in Alabama and to all of the A. F. of L. unions throughout the nation the benefit of the experience of the A. F. of L. unions everywhere."

Appdx. I P. 23-25

* * *

"It is the objective of all labor organizations, including the plaintiffs herein (of whom the A. F. L. was one), to negotiate and bargain with persons employing members of such organizations with respect to wages, hours and working conditions of the members of said unions and pertaining to the other matters affecting or threatening the economic standards or the mutual welfare of the members of such unions; to obtain collective bargaining agreements with such employers and to secure the interests in such agreements of clauses requiring employees to become and remain members of the labor organization involved."

Appdx. I P. 26

* * *

The Statute which was involved in the *McAdory* cases defined a labor organization as "every organization . . . having within its membership employees working in the State of Alabama, organized for the purpose of dealing

with employer or employers concerning hours of employment, rates of pay (etc.)." The A. F. L. and C. I. O. instituted suit alleging that this definition applied to them, generally and not simply in situations where they charter local unions directly.[6] Yet after they thus solemnly asserted and presented proof that "employees working in the State of Alabama" were members of theirs and that they were "organized for the purpose of dealing with employers concerning hours of employment, rates of pay (etc.)," the Board now argues that employees do not "participate" in them[7] and that they do not exist "for the purpose, in whole or in part, of dealing with employers concerning . . . rates of pay, hours of employment (etc.)."

The Constitution of the C. I. O. declares that:

> "The objects of the organization are . . . to bring about the effective organization of the working men and women of America . . . to extend the benefits of collective bargaining and . . . to maintain determined adherence to obligations and responsibilities under collective bargaining and wage agreements."
>
> CIO Constitution,
> Article II, 1948

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[6] The same Textile Workers Union of America, which the Board points to as an intermediate or intervening national union rendering the case different, was present as a party in the case of *C. I. O. vs. McAdory* (Appendix I, P. 1).

[7] It is interesting to note that in *Matter of Isaac Andrews* 87 N. L. R. B. No. 62, the Board approved a finding by its Trial Examiner that employees are admitted directly to membership in the A. F. L. without the intervention of any other Union or labor organization whatever, local, national or international.

The Constitution of the A. F. L. refers to procedure at its conventions for the approval and endorsement of the boycotting of the products of employers who might be engaged in a dispute with an A. F. L. affiliate or affiliates, A. F. L. Constitution, Article IX, Section 4; makes provision for the collection of a "per capita tax" from all members of its affiliated unions, as well as special assessments upon them, A. F. L. Constitution, Article X; and vests power in the A. F. L. to levy a special assessment upon all affiliated unions "to assist in the support of" any affiliated union "engaged in a protracted strike or lockout," A. F. L. Constitution, Article XII.

These represent typical activities of a labor organization and, like the allegations and proof in the *McAdory Cases,* refute the Board's unrealistic assertion that when intermediate national or international unions are in the picture, the C. I. O. and A. F. L. have no employees participating in them and do not exist "for the purpose, in whole or in part, of dealing with employers." As is well said by the Court of Appeals in the *Postex* case (quotation already set forth in part above):

> "To determine that the C. I. O. does not come within the terms of the statute would require us to overlook the realities and substance of its objectives and operations. It is a matter of general knowledge that the parent organization does frequently materially support its affiliates by financial aid and otherwise in their efforts of collective bargaining."
>
> *National Labor Relations Board vs. Postex Cotton Mills,* 181 F. 2d 919, 921.

This Court has recognized and referred to the C. I. O. and A. F. L. as "labor organizations" not only in the *McAdory* cases, supra, but also in *A. F. L. vs. Watson*, 327 U. S. 582, 586 and *Hague vs. C. I. O.* 307 U. S. 496. And *Lincoln Federal Labor Union vs. Northwestern Iron and Metal Co.* 335 U. S. 525; *American Federation of Labor vs. American Sash & Door Company*, 335 U. S. 538; and *United States vs. C. I. O.*, 335 U. S. 106, were all tried and disposed of on the basis of the A. F. L. and C. I. O. being labor organizations. Likewise the highest courts of various states have designated and dealt with them as such. *American Federation of Labor vs. Reilly* 113 Colo. 90, 93; 155 Pac. 2d 145, 146; *American Federation of Labor vs. Rone-Anderson Co.* 185 Tenn. 363, 364; 206 S. W. 2d 386.

The Board itself has frequently held organizations such as the C. I. O. and A. F. L. to be "labor organizations" within the meaning of the Act, and not simply in situations where they directly charter local unions, as is now the Board's contention. *Wrought Iron Range Co.*, 77 N. L. R. B. 487; *Kelco Corporation*, 79 N. L. R. B. 759; *Houston Press Co.*, 70 N. L. R. B. 660; *Albemarle Paper Manufacturing Co.*, 70 N. L. R. B. 153; *Volney Felt Mills, Inc.*, 70 N. L. R. B. 908; *Hanson, Clutch & Machinery Company*, 70 N. L. R. B. 1021; *S. W. Evans & Son*, 75 N. L. R. B. 811; *American Fruit Growers, Inc.*, 75 N. L. R. B. 1157; *Bewley Mills*, 77 N. L. R. B. 774; *Dun & Bradstreet*, 80 N. L. R. B. 56; *Isaac Andrews, et al*, 87 N. L. R. B. No. 62.[8]

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[8] It is important to note that if the C. I. O. is not a labor organization within the meaning of Section 2 (5) of the Act, then it is free to engage in coercion of employees and all the other unfair labor practices proscribed by Section 8 (b) of the Act as well as the acts

A careful scrutiny of other sections of the Act makes it abundantly clear that the C. I. O. and A. F. L. are intended to be included when the term "labor organization" or "organization" appears. Section 9 (b) (3) provides that:

> "No labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

The Board concedes, presumably because of the use of the word "affiliated," that the word "organization," when it appears the third time in this quotation, includes the C. I. O. and A. F. L. Yet the same word is used, where it appears the second time in the quotation, to refer to a union, such as Textile Workers Union of America, seeking certification as bargaining agent. And the Board, of course, cannot and does not claim that as regards the C. I. O. and A. F. L. the situation contemplated in this Section is confined to cases where they are direct charterers of local unions. In short, the Board concedes that here, although the intermediate national or international union is in the picture, the same statutory word and term, "organization," is used to refer to both the intermediate union and the C. I. O.[9]

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made unlawful in Section 303. For it is labor organizations as defined in Section 2 (5) which are, in Sections 8 (b) and 303, prohibited from engaging in such unfair labor practices and unlawful acts.

[9] Incidentally, the Board's concession as to this Section would seem to dispose of its earlier contention that in situations where there is an intermediate union, employees do not "participate" in the C. I. O.

And in Section 304 the question as to whether the C. I. O. is a labor organization as defined by Section 2 (5) would seem to be put at rest. Section 304 prohibits labor organizations, inter alia, from making certain expenditures of money for political purposes. The Board concedes, (Board's Brief p. 111; and see *United States vs. C. I. O.* 335 U. S. 106), that Congress intended the term "labor organization" throughout this Section to include the C. I. O. in general and certainly without limitation to situations where it is direct charterer of local unions. But Section 304 expressly defines what it means by labor organization and that definition is identical to the definition of Section 2 (5).

Thus in agreeing that the C. I. O., without limitation to its directly chartered local union situations, is a labor organization as defined in Section 304, the Board thereby agrees that the C. I. O., without limitation to its directly chartered local union situations, is a labor organization as defined in Section 2 (5)—for, as pointed out, the definitions in the two Sections are completely identical.

If more be needed on this matter, it is to be found in the fact that in the *Postex* case, where the same intermediate national or international union, Textile Workers Union of America, was present as in the instant case, and where, therefore, there was no situation of directly chartered local unions, and where the same issues were before the Court as in the present case—the Board stipulated as a

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For here the Board agrees that the statute is referring to the C. I. O. when it refers to "an organization *which admits to membership employees* other than guards."

matter of record, and in direct contradiction of its present position, "that the Congress of Industrial Organizations *is a labor organization*" (emphasis supplied).

C. *The C. I. O. Is a "National Labor Organization" Within the Meaning of the Act.*

Next comes the Board with the proposition that apart from whether the term "labor organization" as used in the Act includes the C. I. O., at any rate the term "national or international labor organization" does not include the C. I. O. The theory upon which the Board contends that the phrase "national or international labor organization" does not include the C. I. O. is that these words are not to be taken in their natural and ordinary meaning but as "a term of art" in "labor relations parlance" (Board's Brief 100 and 106) and that as a term of art they refer to national and international unions like Textile Workers Union of America and to an organization such as the C. I. O. when, but only when, it occupies its special status of direct charterer of local unions. It must be presumed, says the Board, that Congress used the phrase "national or international labor organization" as such term of art having these specialized connotations.

It seems quite a presumption indeed that the Board thus invites the Court to make as regards Congress' intent. In the first place, it is entirely unlikely that Congress was aware of the special meaning, with its intricate qualifications, which the Board seeks to attribute to the words "national or international labor organization." In the second place, if there is to be any presumption on the matter, it should certainly be in the opposite direction, that is, that in construing a statute it will be presumed that

the legislative body used words in their ordinary sense and according to their common import to men generally and not as terms of art known to a specialized few. *Old Colony Railroad Company vs. Commissioner*, 284 U. S. 552, 560; *Addison vs. Holly Hill Fruit Company*, 322 U. S. 607, 617-618; *United States vs. Stewart*, 311 U. S. 60, 63; *Deputy vs. Dupont*, 308 U. S. 488, 498; 2 Sutherland *Statutes and Statutory Construction* P. 437, 3d Ed. 1943.

Furthermore, the Board cites no authority for its assertion that the phrase "national or international labor organization" has the specialized meaning even in "labor relation parlance" which the Board seeks to attribute to it. The Board does quote from a number of authors in the field of labor relations. These quotations merely set forth, however, the general relations existing between the A. F. L. and C. I. O. and the local unions and the national and international unions, such as Textile Workers Union of America. Not one of these authors says in any way that the phrase "national or international labor organization" does not include the A. F. L. and C. I. O. or that it is not an apt phrase to use in referring to the A. F. L. and C. I. O.

This Court in *C. I. O. vs. McAdory, supra*, designated and referred to the C. I. O. as a "national labor organization":

> "Petitioners are the *Congress of Industrial Organizations, a national labor organization*, and certain affiliated labor organizations . . ." (emphasis supplied).

In the companion case of *Alabama State Federation of Labor vs. McAdory*, Chief Justice Stone used the same words "national labor organization" in referring to the A. F. L. So did this Court again in *American Federation of*

Labor vs. Watson, 327 U. S. 582, 586. It is reasonable and it is a recognized principle of statutory construction that Congress is to be taken as using words in the same sense that the Supreme Court has used them. *Abbottsford vs. Johnson*, 98 U. S. 440; *Grover Sewing Machine Company vs. Florence Sewing Machine Company*, 18 Wall 553; *United States vs. Mooney*, 116 U. S. 104; *Kepner vs. United States*, 195 U. S. 100; *Hecht vs. Malley*, 265 U. S. 144.

And once again a scrutiny of the provisions of the statute refutes the contention which the Board makes. Section 9 (h) says that the labor organization filing a charge and any national or international labor organization of which it is an "affiliate or constituent unit" must comply with the filing requirements set forth in the Section. The term "constituent unit aptly describes the relation between a local union and a national or international union, such as Textile Workers Union of America. It likewise appropriately describes the relation between a local union and the C. I. O. in situations where such local union is directly chartered by the C. I. O., the relationship in this situation being substantially the same as between Textile Workers Union of America and its local union.

But the term "constituent unit" does not aptly describe the relationship between Textile Workers Union of America and the C. I. O.; whereas the term "affiliate" does. Thus the C. I. O. Constitution refers to unions such as Textile Workers Union of America as being "affiliated." The C. I. O. delivers to such unions a "certificate of affiliation." Indeed, as has been noted hereinabove, the Board refers to Textile Workers Union of America as "affiliated" with the C. I. O. (Board's Petition p. 2 & 3 and

Board's Brief p. 18). Nor is the word "affiliate" to be regarded as having been put in the statute without purpose and as mere surplusage.

Therefore, the term "affiliate," having been put into the statute for the purpose of referring to some relationship between labor organizations, and it not being a word appropriate to describe any of the typical relationships except that between the national or international union, such as Textile Workers Union of America, on the one hand and the C. I. O. and A. F. L. on the other—it follows that the C. I. O. and A. F. L. are the national labor organizations referred to in the relationship described by the word "affiliate," they being the one side of such relationship of affiliation and labor organizations such as Textile Workers Union of America being the other.

Elsewhere in the statute the matter is further resolved. Section 10 (c) provides that:

> "In determining whether a complaint shall issue . . . the same regulations and rules of decision shall apply irrespective of whether the labor organization affected is affiliated with a labor organization national or international in scope."

The Board concedes (Board's Brief p. 111-112) that in this Section the phrase "labor organization national or international in scope" includes and refers to the C. I. O. and A. F. L. Thus, says the Board, Congress is referring to the C. I. O. when it uses the words "labor organization national in scope" but is not referring to the C. I. O. when it uses the words "national labor organization"! It is respectfully submitted that in the final analysis the Board's contention on this matter comes hardly to anything more worthy than a play on words.

D. *Such Legislative History as There Is on the Subject Supports the Decision of the Court Below and Not the Ruling of the Board.*

The Board seems to rely on the legislative history of Section 9 (h) as substantiating its contentions on the question here at issue. It can hardly do so with any enthusiasm, however, in view of its admission in the *Northern Virginia Broadcasters* decision that:

> "Although it is possible to extract a few quotations from the Congressional Record and the Committee Reports to support either viewpoint, such quotations all prove, on analysis to be disappointingly peripheral in character. . . . At the very least the sparse legislative history is ambiguous on the subject."
>
> *Matter of Northern Virginia Broadcasters, supra.*

The Board points with some fervor, however, to the post-legislative circumstance[10] that the Joint Committee on Labor-Management Relations, or so-called Watch-Dog Committee, did not officially condemn the *Northern Virginia Broadcasters* decision nor recommend legislation to reverse it. On the other hand, neither did this Committee indicate any approval of the *Northern Virginia Broadcasters* decision, nor did it then recommend any legislation of any sort to Congress.

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[10] The Board also mentions the Presidential veto message as aiding its contentions. It is difficult, however, to see what comfort the Board can derive from the veto message since it was overridden by Congress.

As to the Committee's not suggesting to Congress legislation to overturn the Board's decision, it is entirely reasonable to suppose that the Committee considered the matter would be decided as it should be by the courts and in accordance with Congressional intent.[11] At any rate, it would seem that any effort to divine the considerations which may or may not have influenced a post-legislative committee in actions which it did or did not see fit to take is entirely too speculative a pursuit to be of any material aid in construing a prior-enacted statute.

If post-legislative matters be worth noting, however, the following are of a more positive nature. It appears that the only occasion on which the *Northern Virginia Broadcasters* decision has been discussed on the floor of either branch of Congress was in debate in the Senate on a resolution to reject Reorganization Plan No. 12, which proposed to abolish a substantial part of the independent authority of the Board's General Counsel. In this debate Senator Ellender, one of the Senate conferees who had signed the Conference Report on the Taft-Hartley Act and a member of the "Watch-Dog" Committee, supporting the General Counsel's independent authority and citing his ruling with respect to Section 9 (h) as being correct, said:

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[11] This is exactly the view expressed by the Committee later in commenting on the Board's decision in the *Warshawsky* case, 75 N. L. R. B. No. 154, in which case the Board held that if an international union in compliance with Section 9 (h) filed a petition on behalf of a local union, the Board could disregard the fact that the local union was not in compliance. The Committee stated that it assumed that "the correctness of the Board ruling" would be tested upon the Board's seeking enforcement of an unfair labor practice order "in the United States Circuit Court of Appeals." Report of Joint Committee on Labor-Management Relations, S. Rept. No. 986, 80th Cong. 2d Sess., P. 15.

"Mr. President, until today I have not voted against any reorganization plan which the President of the United States has submitted to the Congress pursuant to the so-called Hoover Commission Reports. . . .

"What the proponents of Reorganization Plan 12 failed to say, however, is that the area in which the Board and the General Counsel are in disagreement is with respect to cases in which the General Counsel has taken a position in favor of vigorous enforcement of the Act. But it is in those very few cases that the Board is refusing to carry out the mandate of Congress by giving full effect to the provisions of the new law to the extent that it modified the one-sided character of the Wagner Act. Let me give the Senate one illustration:

"One of the major provisions in the Taft-Hartley Act is the Section which denies the facilities of the Labor Board to labor organizations or any organizations affiliated with them unless all the officers file affidavits disclaiming membership in or sympathy with the Communist Party.

"When the Act went into effect, Mr. Denham the General Counsel of the Board, ruled that the requirement for signing Communist disclaimers applied not only to the officers of particular unions but to all officers of the A. F. L. and C. I. O. Indeed, it is difficult to see how he could have made any other ruling. . . . The Board, however, reversing Mr. Denham, held in the *Northern Virginia Broadcasters* case that this requirement applied only to constituent

unions of the A. F. L. and C. I. O. and not to the top officers. As a result, many C. I. O. unions were permitted to file charges and petitions for election with the Labor Board even though the top officialdom of the C. I. O. . . . were not in compliance with the Act."

Cong. Rec. Vol. 96,
No. 94, May 11, 1950,
P. 6955.

On the same afternoon, and shortly after Senator Ellender thus upheld the ruling of the Board's General Counsel and attacked the *Northern Virginia Broadcasters* decision, the Senate rejected the Reorganization Plan by a vote of 65 to 18. Cong. Rec. Vo. 96, No. 94, May 11, 1950, P. 6979.

Similarly, Representative Hartley, Chairman of the House Committee on Education and Labor and also a member of the Watch-Dog Committee, after the *Northern Virginia Broadcasters* decision wrote with respect to that decision:

"Lest there be any doubt as to what we meant when we wrote that Section, I want to put down here exactly what I had in mind and also report that not a single member of the House Labor Committee or the joint House-Senate Conference Committee ever indicated that it meant anything else.

"I meant that no local union could petition for an election or file an unfair labor practice charge unless the officers of that local *and* the officers of the international union *and* the officers of whichever of the two major labor organizations the international was af-

filiated with, had filed non-communist affidavits. Putting it specifically, I meant that no U. A. W. local could use the Board's processes unless its officers, the international U. A. W.'s officers and all the C. I. O. officers at C. I. O. headquarters had complied with the law.

"The National Labor Relations Board ruled differently. In a decision remarkable for its twisted logic the Board held that the officials of the A. F. L. and C. I. O. national offices were not officers of an "affiliated" organization. As a result, the two national labor organizations we wanted most to reach were beyond reach of the law we wrote for that purpose. . . .

"I would not be so concerned over this particular decision if it were not for the precedent it established for circumventing the clear intent of Congress."

Hartley: "Our New National Labor Policy," Funk & Wagnalls Company, p. 162-163.

E. *Construing the Statute Is Not the Board's, But the Court's "Task."*

Lastly the Board contends (Board's Brief 134) that "the task of construing" the statute "has been assigned primarily" to it and that the test, in determining whether its construction shall be sustained, is "reasonableness and not rightness."

To this the first answer is that it is not agreed that the Board's interpretation of the statute is either reasonable or right. On the contrary, the Respondent earnestly

insists that the Board's interpretation is thoroughly wrong and thoroughly unreasonable, for all the reasons hereinabove set forth.

In the second place, it is not agreed that the question at issue involves any statutory ambiguity. As hereinabove shown the only ambiguities are those which the Board has undertaken to create.

Finally, the Respondent would take issue with the proposition that "the task of construing" the statute "has been assigned primarily" to the Board. The Board cites as authority for this assertion on its part *National Labor Relations Board vs. Hearst Publications*, 322 U. S. 111, 130. It would seem that the Board can hardly rest its position in this respect on *National Labor Relations Board vs. Hearst Publications*, in view of the subsequent Taft-Hartley amendments to the Act and the central legislative history relating thereto. In the Conference Report on the Taft-Hartley Act, the House Managers said:

> "In many instances deference on the part of the courts to specialized knowledge that is supposed to inhere in administrative agencies has led the courts to acquiesce in decisions of the Board even when the findings concerned mixed issues of law and of fact *(National Labor Relations Board vs. Hearst Publications, Inc.)* . . .
>
> "While the Administrative Procedure Act is generally regarded as having intended to require the courts to examine decisions of administrative agencies far more critically than has been their practice in the past, by reason of a conflict of opinion as to whether it actually does so, a conflict that the courts

have not resolved, there was included both in the House Bill and the Senate Amendment, language making it clear that the Act gives to the courts a real power of review.

"It is believed that the provisions of the conference agreement relating to *the courts' reviewing power will be adequate to preclude such decisions as those in . . . the Hearst* (and other) cases, supra, without unduly burdening the courts."

H. Rept. No. 510,
80th Cong., 1st Sess.,
P. 55-56.

As summarized by the Court of Appeals in *Pittsburg Steamship Company vs. National Labor Relations Board:*

"The conclusion that the Administrative Procedure Act and the Taft-Hartley Act were intended to effect a change in procedure before the Board and to create *more effective judicial review* is inescapable in the light of the legislative history."

Pittsburg Steamship Company vs. National Labor Relations Board, 180 F. 2d 731, affirmed by this Court 340 U. S. 15.

The Administrative Procedure Act provides that:

"So far as necessary to decision and where presented the reviewing court shall . . . *interpret* constitutional and *statutory provisions* . . . " (emphasis supplied).

Administrative Procedure Act,
5 U. S. C. A. 1009 (e)

Nor would it seem that the Board could regard the recent decision of this Court in *Universal Camera Corporation vs. National Labor Relations Board*, October 1950 Term, No. 40, which the Board cites, as in any wise tending to restore to it the finality of judgment which the Taft-Hartley amendments specifically undertake to restrict.

It is respectfully submitted that "the task of construing" the statute here in question has not been "assigned primarily" to the Board but to the courts, as the construction of statutes has ever been. And certainly it is the task and prerogative of this Court to decide whether, in the light of all the circumstances set forth herein, this statute was properly subjected to the "construction" which it has received at the hands of the Board.

II

SINCE THE BOARD SEEKS TO ENFORCE AN ORDER AGAINST THE RESPONDENT, THE RESPONDENT IS ENTITLED TO HAVE THE COURT DETERMINE WHETHER THE STATUTE DID OR DID NOT PERMIT THE ISSUANCE OF THE COMPLAINT ON WHICH THE ORDER IS BASED.

A. *The Board Cannot Now Raise the Contention That Its Construction of the Statute Is Final and Unreviewable and That Its Exceeding of Its Statutory Authority Is No Defense to the Respondent.*

The Board in its Brief (e. g. p. 29) now asserts that its interpretation of the Statute on the matter here in question is "final" and not subject to review by this Court

and that in any event a misinterpretation or disregard of the statute by the Board is no defense in the Respondent's hands against the Board's order. It might be remarked that these contentions are at least not lacking in temerity. Otherwise, it is submitted, they have no merit or virtue of any sort.

In the first place, it is important to note that these contentions have not heretofore been raised by the Board in any way. Indeed, to the contrary, the Board in its Brief in the Court of Appeals (p. 52) said:

> "We have assumed throughout this Brief that the filing requirements . . . are 'jurisdictional,' and that Respondent has standing to raise the issue of the effect of the C. I. O.'s failure to file."

Nowhere in its Petition to this Court for Writ of Certiorari did the Board mention any such issue or contention as it now undertakes to make. Therefore, under the express provisions of the Rules of this Court consideration of such contention is now precluded:

> "Only the questions specifically brought forward by the Petition for Writ of Certiorari will be considered."
>
> *United States Supreme Court Rules*. Rule 38 (2).

This Court has uniformly adhered to this principle.

"Our consideration of the case will be limited to the questions specifically brought forward by the Petition."

General Talking Pictures Corporation vs. Western Electric Company, 304 U. S. 175, 58 S. Ct. 849, 82 L. Ed. 1273, also *Trailmobile vs. Whirls*, 331 U. S. 40, 67 S. Ct. 982, 91 L. Ed. 1328.

In petitioning this Court the Board declared (Petition for Writ of Certiorari p. 2) that:

> *"The question presented* is whether the Board properly issued a complaint upon a charge filed by an international union affiliated with the C. I. O. at a time when the officers of the international had filed .... but the officers of the C. I. O. had not." (emphasis supplied).

The Board prayed (Petition for Writ of Certiorari, p. 1) the Court to issue a writ of certiorari "to review the decision of the United States Court of Appeals for the Fourth Circuit" *on this question*. Yet now, completely reversing itself, the Board argues that it has itself spoken the final word on this question and that *what it asked this Court to review is not subject to review!* Instead the Board asks the Court to uphold it in a contention which the Court below did not pass on *(Trailmobile Company vs. Whirls, supra)* and was not asked to pass on and which the Board did not mention when it asked this Court to take the case.

It is significant that this new position on the part of the Board is also in marked contrast to the distinctly tentative state of mind which it expressed at the time it ruled on the question here at issue. In the *Northern Virginia Broadcasters* decision the Board, quite differently, said that it would undertake

> "to construe the Congressional intent with the materials at hand, until such time as Congress *or the courts* offer us further guidance" (emphasis supplied).
>
> *Northern Virginia Broadcasters, supra.*

Likewise, in the case of *Bethlehem Steel Company Ship Building Division*, decided only last year, the Board said that it

> ". . . is constrained to adhere to the Board's origina view until *the Supreme Court of the United State has had an opportunity to pass on the question*" (emphasis supplied).
>
> *Bethlehem Steel Company,* 89 N. L. R. B. No. 210.

Yet now the Board is quite unwilling for "the Suprem Court of the United States" to have any "opportunity t pass on the question."

B. *There Is No Merit in the Board's Contention That It Construction of the Statute Is Final and Unreview able.*

Even, however, if the Board could now be permitte to raise its contention that its interpretation of the Statut

is final and unreviewable, upon examination such contention is seen to be completely without substance.

The point on which the Board rings the changes and seems chiefly to rely as precluding litigation or judicial review of its ruling is that to permit litigious inquiry into questions of whether there has been proper compliance with the filing requirements of Section 9 (h) would cause entirely too much delay and impede the administration of the Act. To this it might be answered in the first place that inquiry and examination and cross-examination involve delay in any situation but are not merely on that account to be foreclosed.

However, as to the Board's detailed enumeration of the complications and delays which would be involved in litigating questions of whether or not compliance with Section 9 (h) had been properly effected, the immediate answer here is that such considerations are irrelevant to this case. The Respondent has not sought at any point in this case to inquire into or litigate any question of whether the C. I. O. properly complied with Section 9 (h); nor does the Respondent seek a review of a Board determination on any such question. Here it is admitted and agreed that the C. I. O. effected no compliance of any sort. And the sole question on which the Respondent asks judicial review is whether the Board correctly interpreted the Statute in ruling that the C. I. O. need make no compliance of any sort.

There is here no delaying litigation, such as the Board envisions, as to whether the proper C. I. O. officers filed affidavits. It is conceded that no C. I. O. officers at all filed affidavits (Board's Petition p. 2 and 3 and Board's Brief p. 18). There is here no entangling inquiry as to

whether the C. I. O. filed affidavits in proper form disclosing correct information and the like. It is conceded that it filed nothing. The single and clear issue is whether the Statute calls for *any* compliance by the C. I. O. in this case—it being stipulated that the C. I. O. made *no* compliance.[12]

Whether the Statute does or does not call for any compliance by the C. I. O. in the present situation is a matter of determining what the Statute means. And the Board by expounding upon the virtues and necessity of "administrative discretion" cannot deter the Court from its function and responsibility of statutory construction. The question is whether the Statute forbids the Board in a case such as the present to issue a complaint so long as the Board is saying to the C. I. O. that it

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[12] In this connection it is to be noted that the Board relies on *National Labor Relations Board vs. Greensboro Coca-Cola Bottling Company*, 180 F. 2d 840 (C. A. 4), *National Labor Relations Board vs. Red Rock Company*, 186 F. 2d, 27 L. R. R. M. 2355 (C. A. 5) and *National Labor Relations Board vs. Wiltse* decided March 23, 1951 (C. A. 6). Why it does so is somewhat of a mystery. For the *Greensboro Coca-Cola Bottling Company* and the *Red Rock Company* decisions were rendered respectively by the same courts which decided the instant case and the *Postex* case; and in the *Wiltse* case the court emphasizes the very distinction which the Respondent now urges.

> "While the *Highland Park* case is cited by respondent as authority in the instant case, it is not here applicable for the same question is not before this court. The issue here is whether compliance with Section 9 (f), (g), and (h) of the Act are jurisdictional and must be shown before the Board has jurisdiction to proceed. Judge Parker, who wrote the opinion of the court in the *Greensboro Coca-Cola Bottling Co.* case, *supra*;

need make no compliance with the Statute. More specifically the question is whether the Board had any power or authority under the Statute to issue the complaint in this case or whether in doing so, as expressed by the court in *National Labor Relations Board vs. Cheney California Lumber Company*, 327 U. S. 385, the Board "traveled outside the orbit of its authority so that legally speaking there is no order to enforce."

The Board's present contention is that whether it exceeded its statutory authority is for *it* to determine—and determine *conclusively* without review by any court! This is indeed a far cry from what this Court envisioned when it orginally upheld the validity of the National Labor Relations Act:

> "The Act establishes *standards to which the Board must conform*. . . . The order of the Board is subject to review by the designated court and only when

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(Footnote 12 continued)

holding compliance not jurisdictional, as well as in the *Highland Park* case, was obviously of the view that the two cases were concerned with entirely different issues, with which conclusion we are in accord."

National Labor Relations Board vs. Wiltse, supra.

The same distinction is made in the *Red Rock* case:

"This is not to hold that if, on a petition for enforcement, it is made to appear to this Court by clear and positive proof that the Board has, contrary to the Statute, taken jurisdiction of a charge made by a non-complying union, particularly one which has not complied with Sec. 9 (h), the filing of the non-communist affidavit, and has ordered a respondent to recognize and bargain with it, this court would enforce the Board's order. On this record, that question is not before us."

National Labor Relations Board vs. Red Rock Company, supra.

sustained by the Court may the order be enforced. *Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of Constitutional right or statutory authority are open to examination by the court.*" (emphasis supplied).

National Labor Relations Board vs. Jones & Laughlin Steel Corporation, 301 U. S. 1, 47.

And as more recently emphasized by this Court:

"When Congress passes an act empowering administrative agencies to carry on governmental activities, *the power of those agencies is circumscribed by the authority granted. . . . The responsibility of determining the limits of statutory grants of authority in such instances is a judicial function entrusted to the courts. . . .*"

Stark vs. Wickard, 321 U. S. 288, 309-310.

"An agency may not finally decide the limits of its statutory power. That is a judicial function."

Social Security Board vs. Joseph Nierotko, 327 U. S. 358, 369 and see also *Addison vs. Holly Hill Fruit Company*, 322 U. S. 607, 616.

In the Administrative Procedure Act Congress has expressly stipulated that:

"It (the reviewing court) shall . . . hold unlawful and set aside agency action, findings and conclusions

found to be . . . in excess of statutory jurisdiction, authority or limitation or short of statutory right . . . (or) without observance of procedure required by law."

Administrative Procedure Act,
5 U. S. C. A. 1009 (e).

The Congressional Joint Committee on Labor-Management Relations has clearly indicated that it regards rulings by the Board as to the extent and coverage of Section 9 (h) to be reviewable by the courts. In commenting on the decision of the Board in the *Warshawsky* case the Committee said:

"The Textile Workers Union of America and Hosiery Workers both affiliated with the C. I. O. have instructed their locals not to do any filing with the Board. . . . Under the ruling of the *Warshawsky* case, their locals may have cases processed by the Board without having complied with the filing and affidavit requirements. *A test of the correctness of the Board rule may be made upon an employer's refusal to bargain, thus raising the question when the Board seeks enforcement in the United States Circuit Court of Appeals.*" (emphasis supplied).

Report of Joint Committee on
Labor-Management Relations
S. Rept. No. 986, 80th Cong.
2d Sess., P. 15.

C. *There Is No Merit in the Board's Contention That Its Exceeding of Its Statutory Authority Is a Defense Unavailable to the Respondent.*

The Board next says, however, that even if it wrongly construed the Statute and exceeded its statutory authority in issuing the complaint in this case, still the Respondent cannot raise such matters as a defense to itself against the Board's order. This, of course, is essentially another way of saying that the Board's ruling on the question at issue is final, conclusive and unreviewable and cannot be examined by anybody anywhere. For if the Respondent in the case cannot raise the question or get it reviewed, then, of course, it will not be raised or reviewed.

In support of this proposition the Board says that if the Respondent was guilty of an unfair labor practice (which the Respondent denies and which the Court below did not decide), the wrongdoing is not wiped out by any statutory misinterpretation or exceeding of authority on the part of the Board and it would be too much of a "windfall" to the Respondent to allow it to raise such matters as a defense against the Board's order. In short, if the Respondent is a wrongdoer under the Act, it must submit to any order the Board issues, whether lawful or unlawful!

If the Respondent committed an unfair labor practice but no one ever filed a charge against it, could the Board nevertheless proceed to an order and upon the Respondent's challenging the order on the ground that no charge was ever filed, could the Board successfully argue that the absence of a charge was a mere "windfall" to the Respondent and that the Respondent being a wrongdoer under the

Act it could not raise such matter as a defense against the Board's order? [13] The fact that a Grand Jury which returned a bill of indictment was not properly constituted may be a "windfall" to a person accused of crime but it is certainly a matter which he is, and should be, entitled to raise.

Next the Board suggests the consideration that if a union files a charge and the Board declines to issue a complaint on the ground that the union has not complied with Section 9 (h) the union can get no judicial review of such ruling. Therefore, says the Board, it would not be fair that the Respondent should have any review of the Board's ruling in the present case. As to this it is hardly necessary to point out that a statute in order to be valid need not operate on all parties in the same manner at all points. For many years the National Labor Relations Act "operated on" employers exclusively.

Moreover, if an employer files a charge against a labor organization and the Board declines to issue a complaint upon the ground, for example, that interstate commerce is not involved, the employer has no right to judicial review of such ruling. Would the Board argue that, therefore, in a case where it does issue complaint and proceed to an order, against a labor organization, then, since the employer had no right to a review, therefore, the Respondent labor organization should have no right to obtain review of the question as to whether interstate commerce was involved in the case?

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[13] Likewise, for example, if a charge were filed and accepted by the Board in disregard of the six-months limitation prescribed in the Act, the same reasoning would apply.

It is neither unreasonable nor unusual that various matters may be brought to court review only by one who is defending himself—and by him only in a proceeding in which it is sought to subject him to a final order. For example, if an employer moves before the Board to dismiss a union's petition for certification upon the same ground that the Respondent moved before the Board to dismiss the complaint in this case, it seems clear that such employer is not entitled to any judicial review of a Board ruling against his motion—until and unless the time comes that he, like the Respondent, is faced with enforcement of an order entered in a complaint proceeding.

The Board points out that Section 9 (h) was not enacted for the purpose of "conferring rights or benefits upon employers" and that therefore the Respondent has no "legal interest" in whether the Board misconstrued the Statute and exceeded its authority in issuing a complaint against the Respondent. It is, of course, true that the purpose of Section 9 (h) was not to create litigable defenses for employers but to weed Communist influence out of the labor movement for the benefit and welfare of the general public, as has been hereinabove emphasized. It certainly does not follow, however, that an employer cannot defend himself against a Board order by showing that the Statute has been disregarded. Rather it would seem to aid and serve the ends of the Statute if an employer in defending himself is able to show that the Statute's purpose and directive have been violated in his case.

The Board points to such cases as *Perkins vs. Lukens Steel Company*, 310 U. S. 113 and *Alabama Power Company vs. Ickes*, 302 U. S. 464 as authorities to the effect that one who wishes to see the laws properly enforced does

not on that account have any standing to maintain an action for the construction or enforcement of a statute. That principle has no application, however, to the Respondent in its present position.[14]

In the *Lukens Steel Company* and *Alabama Power Company* cases the plaintiffs instituted equitable actions to compel the administrative agencies involved in those cases to confine their actions to what the plaintiffs alleged to be the statutory limits under which the agencies should function. In neither case had the plaintiff been, nor was it about to be, subjected to any directive or order as a result of any alleged exceeding of authority on the part of the administrative agency. The only injury asserted by the plaintiffs was that in the one case, *Lukens Steel Company*, a prospect of profitably doing business with the Government and in the other, *Alabama Power Company*, a hope of more profitable business with the public generally, would be prejudiced by the manner in which the administrative agency was exercising its authority.

The Respondent's position is very different from that of the plaintiffs in those cases. An order has been entered by the Board which is not general to the public but which operates upon the Respondent solely and individually. The Board is seeking enforcement of that order against the Respondent solely and individually. If the order is enforced, the pains and penalties of any failure to fulfill it

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[14] The Respondent would, for example, undoubtedly have been held to have no legal standing if it had sought to enjoin the Board from rendering the *Northern Virginia Broadcasters* decision or had it sought to enjoin the Board from carrying out such decision in that case.

will fall on the Respondent and no one else.[15] If in such situation the Respondent does not have a "legal interest" in being allowed to show that the Board was without statutory power or authority to enter the order against the Respondent, then it is difficult to understand who ever could have a "legal interest" in any case.

III

THE COMPLAINT HAVING BEEN ISSUED IN DISREGARD OF THE STATUTE, THE BOARD'S ORDER CANNOT BE ENFORCED ON ANY THEORY THAT THE UNION'S "DISABILITY" HAS BEEN "CURED."

The Board says that despite its rulings that the C. I. O. need not do so, the C. I. O. did on December 22, 1949, comply with the filing requirements of Section 9 (h). Upon which the Board makes the final suggestion that if all its contentions, hereinabove discussed, be overruled, still its order in this case should be held valid because the C. I. O., after the issuance of the order, did comply with the Statute.

This proposition, like the Board's contention that its ruling in the case is final and unreviewable by the courts and that any exceeding by the Board of its statutory

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[15] The successful complainants in *Stark vs. Wickard, supra*, certainly had a far less direct and tangible interest in the matter being litigated than is the case with the Respondent here. See also *Federal Communications Commission vs. Sanders Bros. Radio Station*, 309 U. S. 470, 476.

authority cannot be raised by the Respondent, comes for the first time in the Board's present Brief. The Court below had no opportunity to pass on any such contention because no such contention was made in that Court. Likewise it was not raised in the Petition by which the Board obtained entry into this Court. Therefore, under the express rules and the uniform decisions of the Court, hereinabove set forth, this new contention on the part of the Board cannot be considered.

The contention now being discussed seems indeed to have been so negligible to the Board, or so completely an after-thought with it, that it does not see fit to designate the matter even in its present Brief as one of the "Questions Presented" (Board's Brief p. 2) nor as among the "Specifications of Error to be Urged" (Board's Brief p. 18). This too is in disregard of the specific Rules of this Court. Rules of the United States Supreme Court, Rule 27 (2) (e), 28 U. S. C. A.

If, however, the Board's present contention could now be considered, it is to be noted that the factual proposition on which it rests has no basis anywhere in the record. Compliance with the statute on the part of the C. I. O. is not properly before the Court upon a bare statement in the Board's Brief that such compliance occurred.[16]

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[16] The date on which the Board says the C. I. O. complied, that is, December 22, 1949, was some six months after the Board had entered its final order in this case. 84 N. L. R. B. 744. That date was also some six months before the Court of Appeals heard this case; yet, as has been noted, the Board made no mention of its present contention to that Court.

Apart from all this, however, the basic answer to the point which the Board now seeks to make is that, as has been shown hereinabove, since the Statute required compliance by the C. I. O. and the C. I. O. had not complied, the complaint was issued without statutory authority, and indeed in violation of the statute's express and positive prohibition, and had no more legal validity than if the Board had never been created. In the eyes of the law the complaint and the order were a nullity. Having been stillborn, life could certainly not be breathed into them six months later.

The Board overlooks the total invalidity of its complaint when it undertakes to treat the situation as simply one in which the union was under a "disability" which has now been removed and the authorities it cites on the subject of "retroactively curing a disability of plaintiffs to sue" entirely miss the mark. The situation is not one of infirmity which might be "cured" but, rather, one in which legally, life never existed. There is no "cure" in the latter situation.

Instead of being analogous to cases in which a civil suit is brought by a plaintiff under a disability, the present case is much more similar to situations in which an act of Congress has placed certain limitations upon the jurisdiction of a court or prescribed a fixed time limitation, in which situations it is held that an action commenced without regard to such limitations must be dismissed even though events have subsequently occurred which purport to bring the case within the stipulated limitations. *United*

States ex rel Portland Cement Co. vs. McCord, 233 U. S. 157. See also *American Bonding & Trust Co. vs. Gibson County*, 145 Fed. 871, 874 (C. A. 6), *Morgan Heirs vs. Morgan*, 15 U. S. 290.

The Board, of course, uniformly maintains that an order issued by it does not become moot, and enforcement of it should not be withheld because it has been obeyed or because since the order was issued, events have occurred making its directives unnecessary. *National Labor Relations Board vs. Pennsylvania Greyhound Lines*, 303 U. S. 261. If an order totally valid when issued does not become invalid or unenforcible because of subsequent occurrences, then by the same standard, an order totally invalid when issued does not become valid because of subsequent occurrences.

The Board argues, however, that the complaint ought not to be dismissed for if it were, says the Board, the General Counsel of the Board "could now issue an unassailable complaint" (Board's Brief p. 137) and take the case back through all its proceedings until the Board would be back before the courts with a new order "identical" to the one now in question. The problem of whether a new complaint would be "unassailable" is, of course, a bridge which can be crossed only when and if it is reached. And the Board has no means of knowing, any more than the Respondent, what the pertinent and controlling circumstances may then be.

It should be observed at this point, however, that, according to the Board's own statements, it is a matter of very reasonable possibility that the very non-compliance

which vitiated the present complaint will be in existence at the time the Board might hereafter undertake to issue a new complaint. Both in its Petition for Writ of Certiorari (p. 7) and in its Brief (p. 63) the Board emphasizes that "a compliance status once achieved does not necessarily continue for any definite period of time" and that there is "no assurance" that the C. I. O. "will continue to file" the affidavits required by Section 9 (h). Indeed, although the Board asserts in its Brief that the C. I. O. complied with Section 9 (h) on December 22, 1949, nowhere does the Board say or claim that the C. I. O. is in compliance at the present time! Thus, on the subject of compliance alone the Board's announcement that it can hereafter issue an "unassailable" complaint is no more than speculation and conjecture.[17]

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[17] Likewise, the Board's statement that "a dismissal of the complaint" would "leave outstanding the original charge" (Board's Brief 137) is a novel and doubtful proposition. Heretofore a dismissal of a complaint has uniformly involved the dismissal of the charge on which it is based. If a charge is to be regarded as still alive after the dismissal of a complaint, then the statute of limitation provided in the Act is, in such situation, certainly set at naught.

Furthermore, if the decision of the Court below is sustained, then the Board concedes that the charge here involved was a non-complying charge up until December 22, 1949. The Board dismissed many charges for non-compliance during the period from the effective date of the Act to December 22, 1949. Therefore, other non-complying charges during that period having been dismissed, it would seem a palpable discrimination if the present charge, equally non-complying during the same period, instead of being dismissed, should be made the basis of a new complaint.

More fundamentally, however, it is indeed startling legal argument that an invalid complaint should not be dismissed because perchance a valid complaint could be or might be filed. The law would indeed be a loose and uncertain affair if cases were adjudicated on the basis of what might have been or what might be. In any court known to this Respondent a prosecutor, for example, would have short shrift were he to stand and argue that although the bill of indictment which he had presented to the court was invalid, still it should not be dismissed because he felt sure that he could come again with a valid one! And the Board's contention to the same effect, even if it could now be considered, is equally unsound.

Upon all the authority and reasoning herein set forth, the Respondent earnestly contends that the decision of the Court below was correct and should be affirmed.

Respectfully submitted,

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Charlotte, North Carolina
Attorney for the Respondent

Of Counsel:
PIERCE AND BLAKENEY
Charlotte, North Carolina

APPENDIX I

Excerpts from printed Transcript of Record on File with this Court in Case of *Congress of Industrial Organizations vs. McAdory*, 325 U. S. 472, 65 S. Ct. 1395, 89 L. Ed. 1741:

IN THE CIRCUIT COURT, TENTH JUDICIAL CIRCUIT OF ALABAMA

Congress of Industrial Organizations, an Unincorporated Association; Philip Murray, Individually and as President of said Congress of Industrial Organizations; Alabama State Industrial Union Council, an Unincorporated Association; Carey Haigler, Individually and as Secretary of said Alabama State Industrial Union Council; United Steel Workers of America, an Unincorporated Association; David McDonald, Individually and as Secretary-Treasurer of said United Steel Workers of America; International Union of Mine, Mill & Smelter Workers, an Unincorporated Association; Reid Robinson, Individually and as President of said International Union of Mine, Mill & Smelter Workers; Textile Workers Union of America, an Unincorporated Association; Emil Rieve, Individually and as President of said Textile Workers Union of America; Local Union No. 1015 of the United Steel Workers of America, an Unincorporated Association; Hoyt Brant, Individually and as President of said Local Union No. 1015; Local Union No. 2971 of the United Steel Workers of America, an Unincorporated Association; William Nathan, Individually and as President of said Local Union No. 2971; Local Union No. 2382 of the United Steel Workers of America, an Unincorporated Association;

R. C. Scruggs, Individually and as President of said Local Union No. 2382, Complainants,

vs.

Robert E. McAdory, as Solicitor of Jefferson County, Alabama; and Holt McDowell, as Sheriff of Jefferson County, Alabama, Respondents

BILL OF COMPLAINT AND PETITION FOR DECLARATORY JUDGMENT, INTERLOCUTORY AND PERMANENT INJUNCTION—

Filed August 11, 1943.

To the Honorable Judges of the Tenth Judicial Circuit of Alabama, in Equity Sitting:

Humbly complaining come the complainants and respectfully show unto this Honorable Court the following facts:

1. At all times herein mentioned the Congress of Industrial Organizations was and now is a voluntary and unincorporated association composed of numerous voluntary and unincorporated associations or labor unions, the said affiliated associations having an aggregate membership of several million persons in all States of the United States, and in Canada, including officers and several thousand members in Jefferson County, the State of Alabama, and all of said members are classified according to their various trades and industries into separate, voluntary and unincorporated associations or Labor Unions. The Congress of Industrial Organizations maintains its principal office in the City of Washington, District of Columbia. The complainant Philip Murray at all times herein mentioned was and now is a member of a labor union affiliated with

the said Congress of Industrial Organizations and was and is the duly elected, qualified and acting President of the said Congress of Industrial Organizations.

(Record P. 1-3)

* * *

5. At all times herein mentioned the Textile Workers Union of America was and now is a voluntary association of employees employed in textile plants and has many thousands of members in numerous States of the United States, including thousands of members in the State of Alabama and in Jefferson County, Alabama. It is affiliated with the Complainant Congress of Industrial Organizations. Its members are organized into autonomous subdivisions known as local unions, a number of which consist in whole or in part of persons, more than twenty-five in number, who are residents of the State of Alabama, and work in the State of Alabama.

(Record P. 4-5)

* * *

9. All Complainant unincorporated associations are organizations and associations of employees, including employees working in the State of Alabama, and including employees working in Jefferson County, Alabama, in various trades, occupations and industries who have from time to time assembled and associated together and are assembling and associating together for the purpose of organizing themselves into voluntary and unincorporated associations and for the purpose of forming, joining and assisting their organizations so formed, including the complainants herein named, to bargain collectively through representatives of their own chosing and to engage in concerted activities for the purpose of collective bargaining

and otherwise dealing with their employers concerning hours of employment, rates of pay, tenure or other terms or conditions of employment, grievances of any kind relating to employment, and for other mutual aid and protection. The members of Complainant unincorporated associations are not subject to the Act of Congress known as the Railway Labor Act.

10. The said employees have associated and assembled and formed voluntary associations, named herein as complainants, and other labor unions affiliated with the said complainants for the following activities necessary to the effectuation of the foregoing purposes:

(a) Exchanging and discussing among and between themselves ideas and information related to the foregoing purposes and arriving at mutual and common decisions;

(b) Disseminating to the public, to fellow employees who have not joined in the association and to public officials and representatives of government, both of the various states, including Alabama, and of the United States facts, information and opinions concerning the said association, its purpose and objectives and the problems of its members and of wage earners generally, the benefits of the National Labor Relations Act, the Railway Labor Act, and other Federal statutes and the rights granted thereby;

(c) To cement the interest of organized labor and of employees in individual trades and industries for their mutual protection, to establish fraternal relations among such employees, to insure harmonious cooperative action, to protect and promote the rights, privileges and immunities of the wage earners and the general welfare of labor organizations and em-

ployees represented by and affiliated with the complainants and of labor generally, and to increase the dignity of labor and elevate it to a higher level of good citizenship.

(Record P. 7-8)

* * *

13. In the effectuation of the purposes aforementioned it is the necessary objective and practice of labor organizations and of the complainants herein mentioned and their affiliates to negotiate and bargain with persons employing members of such organizations with respect to wages, hours, tenure, and other terms and conditions of employment of the members of said unions and pertaining to other matters affecting or threatening the economic standards and the mutual welfare of the members of said union and to arrive at mutual agreements embodied in collective bargaining contracts with said employers.

(Record P. 9)

* * *

Labor organizations, including the complainants in the present action, are accountable to and do account to members of such organizations for all funds received, possessed and handled by such organizations. The facts respecting the extent of and the distribution of the funds of a labor organization, including the complainants herein, are not, except by common consent of the members in accordance with the rules governing the operation of the organization as adopted by the members, made known to employers of members of the said organizations. The disclosure of such information to employers and to persons with interests adverse to those of the complainants would be detrimental to the best interests of the members of said

organizations and to the achievement of the purposes and objectives herein set forth.

(Record P. 12)

* * *

22. The members of the complainant unincorporated associations and the officers, agents and employees of the said associations and the members of all other organizations of employees having members who are residents of the State of Alabama and organized for the purpose of dealing with employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment and the officers, agents and employees of such organizations constitute a class situated similarly to the complainants herein with respect to the matters herein alleged and are so numerous as to make it impractical or impossible to bring them all before this Court, but the rights and interests of all persons with respects to the thing and matters in this complaint alleged are fairly represented by the complainants herein who bring this suit for and on behalf of themselves and all other organizations and persons similarly situated.

(Record P. 14-15)

* * *

Be It Enacted by the Legislature of Alabama:

Section 1. Declaration of Policy. The right to live involves the right to work. The public and working men and women must be protected. The activities of labor organizations affect the social and economic conditions of the State and the welfare of its citizens. It is declared to be the policy of this State, in the exercise of its police power and in the protection of the public interest, to promote voluntary and peaceful settlement and adjustment of

labor disputes and to regulate the activities and affairs of labor organizations, their officers, agents, and other representatives in the manner and to the extent hereinafter provided.

Section 2. When used in this Act, the terms defined shall have the meaning here ascribed to them unless it clearly appears from the context that some other meaning is indicated: (a) "Labor Organization" or "Labor Union" shall mean every organization, association, group, union, lodge, local, branch, or subdivision thereof, whether incorporated or not, having within its membership employees working in the State of Alabama, organized for the purpose of dealing with employer or employers concerning hours of employment, rates of pay, or the tenure or other terms or conditions of employment, but such term or terms shall not include any labor organization, or labor union the members of which are subject to the Act of Congress known as the Railway Labor Act.

(Record P. 62)

* * *

Testimony of John Brophy

The complainants then offered the following testimony:

JOHN BROPHY, a witness called by complainants, being first duly sworn, testified, as follows:

Direct Examination.

By Mr. Harris:

Q. What is your name?

A. John Brophy.

Q. Where do you live?

A. Washington, D. C.

Q. In what business are you engaged?

A. My present position is Director of Industrial Union Councils, which is a central body of C. I. O.

Q. How long have you been connected with the C. I. O.?

A. Since its inception in 1935, December of that year.

Q. Have you devoted all of your time to C. I. O. work since its inception?

A. I have. I was Organizational Director from the inception of C. I. O. up to and including the year 1940, and from then on I have been Director of the Industrial Union Councils.

(Record P. 71-72)

* * *

Q. Mr. Brophy, how long have you been connected with or a member of labor organizations?

A. Forty-five years.

Q. Have you devoted practically all of your time to labor organizations or labor unions and the work of such organizations and associations during the past forty-five years?

A. Yes as a local member of the union I was active in a local way and held various positions, local offices and on committees; and then for the past twenty years I have been engaged in executive work and on a larger scale, that is, matters affecting the union, concerned with organizational activities, collective bargaining and the administration of the contracts after they have been consummated.

(Record P. 72)

* * *

Q. When did you become active in the Congress of Industrial Organizations, the C. I. O. or the predecessor

organization known as the Committee for Industrial Organizations?

A. December, 1935.

Q. Were you one of the organizers of the Committee for Industrial Organization?

A. Yes. I was one of the original Committee that set up the Committee for Industrial Organization.

(Record P. 73)

* * *

Q. Now, as Director of Industrial Union Councils, have you been involved in directing organizing campaigns?

A. Yes, I have. My work has been to advise and counsel in that work.

Q. How about your participation and connection in collective bargaining agreements?

A. I have been engaged in large scale collective bargaining.

Q. In the making of the agreements and administration of unions after agreements have been made?

A. Yes.

Q. Now, when you were a member of the local union, were you active?

A. Yes, very active.

Q. Were you active as an organizer then?

A. Yes. All the local people were active in completing the work of organization in our community.

Q. Now, as Organizational Director and Director of Industrial Union Councils for C. I. O. — Judge, wherever I refer to C. I. O., I mean Congress of Industrial Organizations; its abbreviation is in such general use by habit I call it that — as Organizational Director and Director of Industrial Union Councils for C. I. O., have you

been in rare and in frequent touch with National and local officials or have you been in constant touch with National and local unions, with labor unions affiliated with C. I. O.?

A. I have been constantly in touch with all National unions as to their various activities, with particular reference, of course, to organizing work and also to the collective bargaining program.

Q. Have the officials brought in to you their problems and discussed them with you?

A. Yes.

Q. Have you in turn given them the benefit of your experience with other organizations, other locals, other unions?

A. I have.

Q. And the experience you gathered as a national official of the C. I. O.?

A. Yes.

(Record P. 74-75)

* * *

Q. Could you give the Court a rough estimate of the International unions that are now a constituent part of members of the Congress of Industrial Organizations?

A. About thirty-five National and International Unions comprise the Congress of Industrial Organizations.

Q. How many members approximately would you say your organizations have?

A. Some six million members.

Q. Do they operate in practically every State of the United States, including the State of Alabama?

A. They do.

Q. Just what was the circumstances which gave rise to the Committee for Industrial Organization and later the Congress of Industrial Organizations?

A. The necessity of establishing industrial unions that could pool together the strength and experience for the purpose of effectively advancing the work of organization and establishing collective bargaining. It was the conviction of the original group the industrial union type of this organization was best fitted to cope with modern industry. The development of industry the last score or more of years has been large scale, covering several or more states, and concentrating power in a given industry; and to effectively do the job of organizing and to be able to cope adequately at the bargaining table, it was necessary to have a type of union, the industrial form of union, in order to cope with widespread corporate industrial organization of the employers.

Q. Would you say that the organization of the employers had become larger and more extensive in recent years?

A. Yes, very much so.

Q. From your experience, is it your judgment that such an organization as C. I. O. is a practical necessity in order that workmen, or the employees, may bargain with anything like approximate equality with employers in Alabama?

A. I do, yes.

(Record P. 76-77)

* * *

Q. In the collective bargaining between the C. I. O. and the employer, does the C. I. O. make contracts covering merely a plant, or does it make contracts covering all the employees if possible?

A. The objective of the C. I. O. National Union is to get a collective bargaining contract with all the employees of a given company or corporation, and whenever possible a contract covering all the workers in a given industry. That is the main objective of the C. I. O. unions in their collective bargaining activities.

(Record P. 82)

* * *

Q. How about financial assistance from the National organization of the C. I. O. to the various local organizations?

A. Both financial and advisory assistance is extended from the national C. I. O. to its affiliates.

(Record P. 86)

* * *

Q. Now, is it the professed aim of the C. I. O. to organize not merely the employees of a particular plant but employees of all plants in a particular industry that are operating in the state?

A. It is to organize all the workers engaged in a particular industry.

(Record P. 89)

* * *

Q. By balance of the two forces, you mean balance of bargaining power between the employee on one hand and the employer on the other hand.

A. That is right, of course, I may say this, that under

present conditions, the war emergency, the C. I. O. has given a pledge to refrain from the strike weapon; and the policy of the C. I. O. to observe that pledge of no-strike during the war, of course, that is made possible because of the fact there is an agency, the War Labor Board, to whom disputes, and the failure of settlement, to whom disputes between employer and employee may be submitted and adjudicated.

(Record P. 94)

* * *

Q. Mr. Brophy, has it or not been the policy and custom of the C. I. O. to refuse to handle non-union material?

A. There have been many instances where they have refused to handle non-union material.

Q. Now, as an instrumentality or agency in union work and organization is the power and right to refuse to handle non-union material, and is the exercise of that power, a practical means of strengthening unions?

A. Yes, particularly in the initial stage of organizational activities and the early stages of relationship with the employer.

(Record P. 96)

* * *

Q. That local union, you say, is the nucleus of a possible national union?

A. It is. But I was going to say as an exception. Until such time, which may be long or short, it is responsible directly to the national C. I. O., just as another local union in another industry would be responsible to the National or International Union.

Q. The individual member of that local has his membership in the local?

A. That is right.

Q. And the local, in turn, affiliates directly with C. I. O.

A. That is right.

Q. And the individual member of that local is not himself a member of C. I. O.?

A. Yes; we are all members of C. I. O. It is just in the same sense you may be a citizen of Birmingham and the State of Alabama and a citizen of the United States, so I may be a member of a local union that is affiliated with a National Union that is in its turn affiliated with the C. I. O. We have the overall membership, as it were, in this fraternity of local and national unions.

(Record P. 98-99)

* * *

Q. C. I. O. distinguished from the constituent unions, maintains a treasury of its own, does it not?

A. Yes, it does.

Q. Does any of that money find its way into educational movements?

A. Yes, it does—into all the various educational activities.

(Record P. 101)

* * *

Q. All right. Now then, among the services you render is assistance in negotiating collective bargaining contracts, isn't it?

A. That is true.

Q. Let me understand what function the national C. I. O. itself, as distinguished from its constituent unions,

renders with respect to specific contracts for its members?

A. Certain unions may ask that the C. I. O. representative here in Alabama assist in the negotiating of agreements with certain concerns. They can call on our C. I. O. representatives here in the state, or they can confer with our national officers on the subject and ask for special assistance.

Q. All right. Now, you maintain a staff, do you not, to go around and assist in negotiating contracts?

A. We maintain a staff, some of them are stationed at certain places, and they are available, among other things, to assist in negotiations where such assistance is asked for.

Q. You have here in Alabama such men, do you not?

A. Yes.

Q. Can you put their names in the record, or some of them?

A. Well, for instance, Mr. Haigler is present, he is available for consultation and assistance in negotiations; and there may be others sent in from time to time. They are a changing force, some of our people.

Q. Do you have a field organization you send into various states as they are called for for that purpose?

A. Some of them are permanently located, and others are sent in from time to time, depending on the volume of work and other circumstances.

Q. Are those men paid out of the central treasury or the constituent union treasuries?

A. They are paid out of the central treasury, that is, the direct national representatives. In some of our other units, like the State Council, it would be paid out of the state treasury.

(Record P. 108-109)

* * *

Q. It is the objective of the C. I. O. to make the same rates of pay applicable in Alabama as in Pennsylvania?

A. Yes. The union's objective is to get the same pay for the same class of work whether it be Illinois, Pennsylvania, Alabama or Tennessee. In other words, one worker with the same skill as another is entitled to the same rate of pay.

Q. You classify workers into classes determined by what they do and by their experience and skill in doing that thing?

A. That is right.

Q. The policy of the union is to see each man who falls within the same classification receives the same pay, regardless of the state it is performed in?

A. That is the general objective.

Q. Not only the general objective, it is the policy, isn't it?

A. Yes, sir, policy, objective and policy.

(Record P. 116)

* * *

Q. Now, we have covered, I believe, your education and your legislation, and I believe, your negotiation activities. You also have an activity or political activity department of the C. I. O., do you not?

A. We are interested in political activity, yes.

Q. Well, are any funds of the central treasury of the C. I. O. devoted to political purposes?

A. Well, political purposes is pretty broad, isn't it?

Q. Haven't you a committee called the Political Action Committee of the C. I. O.?

A. Yes, Political Action Committee, of which I am not a member.

Q. How does it get funds?

A. Various ways.

(Record P. 118)

* * *

Q. Now, you told your counsel, or Mr. Harris, this morning that it was the policy of C. I. O. to organize on an industrial basis.

A. Yes.

Q. And that you take a given industry and include in your organization that industry from the bottom rungs of the ladder up?

A. Right.

Q. How far is it your policy to go?

A. Our policy would be to include all workers employed in and about a given industry, exclusive of those in management who have the right to hire and fire.

Q. Does that mean you want the lower ranges of foremen?

A. Yes. We would want them, because they are working men who have a very close relationship to the actual producing workers, and their interests are involved as to wages and conditions and tenure of position, so there is mutuality of interest; and the supervisory force, broadly speaking, it is just slightly glorified producer workers.

Q. It is the policy of the union to include supervisory forces?

A. I have already testified we did.

Q. Is it your policy to include technical workers as well as supervisory employees?

A. Yes.

Q. And clerical workers?

A. Yes.

(Record P. 123-124)

* * *

Q. If they exclude persons who according to the general policy should be included, will that local union be longer allowed to affiliate with C. I. O.?

A. The answer to that is the local union will not exclude those who are eligible to belong to the union. To do that would be to fly in the face of the very policy of the union.

Q. The national policy of the union?

A. That is right.

Q. That matter is determined on a national basis and not on a local basis?

A. In this sense, all workers employed in a given industry are entitled to membership, unless they have to do with company management, unless they have to do with hiring and firing—those are excluded.

Q. Does C. I. O. and its affiliated organizations organize industry that is not engaged in interstate commerce?

A. Well, they organize all workers.

Q. All workers?

A. Yes, there would be some of course.

(Record P. 127-128)

* * *

Q. C. I. O. has a membership in several states of the Union and in the District of Columbia?

A. I imagine it does. It would be hard to find a state which has no C. I. O.

(Record P. 132)

* * *

Q. In other words, you consider it inimical to the interests of the C. I. O. because it has been thought to interfere with the right to contract for a closed shop in Alabama?

A. It is an interference with collective bargaining.

Q. That is that intimidation you spoke about?

A. That is the intimidation the Act imposes upon our workers.

Q. It is true you do not wish to conform to the terms of the Bradford Act, is that it?

A. It isn't a question of conforming. They are under pressure of it, and for that reason C. I. O. is before this Court today in connection with the Act.

(Record P. 133)

* * *

Q. In addition to the activities that you have enumerated of C. I. O. International and National organization, or central organization we will call it, and the Alabama Industrial Union Council, I will ask you if you have enumerated all their activities and interests and efforts carried on here in Alabama?

A. I have, to the best of my memory, unless you refer to the Political Action Committee.

(Record P. 163)

* * *

Q. And in addition to that, you carry on a great deal of organizational work?

A. I do.

(Record P. 164)

* * *

Excerpts from Printed Transcript of Record on File with this Court in Case of *Alabama State Federation of Labor vs. McAdory*, 325 U.S. 450, 65 S.Ct. 1384, 89 L.Ed. 1725:

IN CIRCUIT COURT OF JEFFERSON COUNTY SUBSTITUTED PETITION FOR A DECLARATORY JUDGMENT—
FILED OCTOBER 13, 1943

By leave of the Court first had and obtained the plaintiffs substitute this their petition for a declaratory judgment in this cause making their substituted petition for a declaratory judgment read as follows:

The plaintiffs, Alabama State Federation of Labor; Local Union No. 103, United Brotherhood of Carpenters and Joiners of America; American Federation of Labor; United Brotherhood of Carpenters and Joiners of America; and B. E. Jones, respectively, bring this, their petition against Robert E. McAdory, as Solicitor of Jefferson County, Alabama, and Holt McDowell, as Sheriff of Jefferson County, Alabama, for a declaratory judgment, and as a basis for the relief prayed for respectfully show unto the Court the following statement of facts, to-wit:

(Record P. 1-2)

* * *

2-a. The American Federation of Labor is a voluntary, unincorporated labor organization composed of numerous voluntary, unincorporated associations of labor organizations, the said affiliated associations having an aggregate membership of several million persons in all the states of the United States, including the State of Alabama, and in Canada. All of said members are classified according to their various trades, crafts and industries into separate voluntary, unincorporated associations of labor

unions. Each of them, and the American Federation of Labor, were organized and are maintained and operated for the purpose of dealing with employers concerning hours of employment, rates of pay and working conditions generally, and each having within its membership employees working in the State of Alabama. The American Federation of Labor maintains its principal office in the City of Washington in the District of Columbia.

(Record P. 3)

* * *

AFFIDAVIT OF WILLIAM GREEN

STATE OF OHIO,

County of Coshocton, ss:

WILLIAM GREEN, being duly sworn, deposes and says:

1. I reside at Coshocton, Ohio.

2. I make this affidavit in support of the application of the plaintiffs for an injunction as prayed for in the complaint filed in Montgomery County, Alabama.

3. I am President of the American Federation of Labor (hereinafter called the "A. F. of L.") have been President continuously since December, 1924.

(Record P. 244)

* * *

6. As the President of the A. F. of L., I have been in constant touch with the national and local officials of many of the labor unions affiliated with the A. F. of L. In this manner these officials have brought to me the problems which they have in the course of their normal operations and activities, and I, in turn, have been able to give them the benefit of the experience of the other labor organiza-

tions affiliated with the A. F. of L., together with the experience of the A. F. of L. as a national body and also have given them the assistance of the A. F. of L. in the endeavor to aid and solve their specific problems.

(Record P. 245)

* * *

14. The A. F. of L. is a voluntary and unincorporated association composed of numerous voluntary and unincorporated associations of 'abor unions known as national and international labor unions, state federations, city central bodies, and directly affiliated local unions. The A. F. of L. issues certificates of affiliation to each of such affiliates. Each national and international union affiliated with the A. F. of L. has its own constitution. Each of said organizations issues charters to its respective local unions. Each of said national and international unions affiliated with the A. F. of L. is an organization of employees in particular trades, crafts or industries, organized for the purpose of dealing with employers concerning hours of employment, rates of pay, working conditions, or grievances of any kind relating to employment. The A. F. of L. is, therefore the single organization to which all of these various labor organizations are affiliated for the purpose of securing greater strength to all through the united effort and policies which can be established and achieved through such single national organization. Each affiliated organization of the A. F. of L. has so affiliated itself to be associated with other labor organizations so as to fully develop its own strength and achieve a high degree of organization of the workers within its jurisdiction. Neither the A. F. of L. nor any of its affiliated unions nor any of the local unions

of such affiliates engage in any activity of a commercial nature or in any business conducted for a profit.

(Record P. 246-247)

* * *

19. To effectuate the purposes of the A. F. of L. as set forth in its constitution, the affiliated unions of the A. F. of L. exchange and discuss among and between themselves ideas and information relating to said objectives and arrive at mutual and common decisions, disseminate to the public and to the workers of the nation who have not joined any affiliated organization of the A. F. of L., and to public officers and representatives of the governments of the various States, including Alabama, and of the United States, facts, information and opinions concerning the A. F. of L. and its affiliated organizations, their purposes and objectives, problems of the membership of the A. F. of L. and of the wage earners generally, the benefits of the National Labor Relations Act and other federal and state statutes and the rights guaranteed thereby and the harmful effects to organized labor of any and all legislation which is not considered beneficial to organized labor. In this connection the A. F. of L. maintains an educational program, distributes educational material to its affiliated organizations, maintains a national publication known as "The American Federationists," maintains a national legislative service by which it keeps its affiliated organizations informed regarding Federal and State legislation and proposed legislation. Considerable monies are expended by the A. F. of L. in behalf of such activities.

20. The national office of the A. F. of L. maintains several hundred regional representatives throughout the nation to assist in the uniform operations and policies of

the A. F. of L. and its affiliated unions. These representatives represent the A. F. of L. in their respective regions, assist the affiliated organizations of the A. F. of L. in their respective regions, assist in the organization of new local unions to be affiliated with one of the national or international unions affiliated with the A. F. of L., inform the local unions of the affiliated organizations of the A. F. of L. regarding A. F. of L. policies generally and as they relate to specific problems confronting said local unions, and participate in the solution of such problems where their assistance is sought by local unions or where the interests of the A. F. of L. are involved.

21. The national office of the A. F. of L. from time to time, upon request of the affiliated organizations, assigns organizers to said affiliated organizations throughout the country in the organizing of workers in their organizing activities. Specific or general problems of each of the affiliated organizations of the A. F. of L. are frequently brought to the attention of the national officers of the A. F. of L. in order that they or their associates may assist said affiliated organizations in the solution of such problems.

22. The A. F. of L. is constantly being called upon to render financial assistance or to furnish personnel to assist its various affiliated organizations in their manifold activities both in terms of organizing, collective bargaining with employers, legislative work, and in all of their other activities and pursuits.

23. The national office of the A. F. of L., its officers and representatives, are in constant contact with the affiliated organizations of the A. F. of L. and their local unions through the country and maintain a regular and steady flow of correspondence, communication, and per-

sonal contact through the regional representatives of the A. F. of L. with the personnel of all the affiliated organizations of the A. F. of L. and their respective local unions. The A. F. of L. conveys to the A. F. of L. Unions in Alabama and to all of the A. F. of L. unions throughout the nation the benefit of the experience of the A. F. of L. unions everywhere.

(Record P. 247-248)

* * *

29. In furtherance of the objectives set forth in their constitutions, the national and international unions and their local unions exchange and discuss among and between themselves ideas and information relating to said purposes and objectives and arrive at mutual and common decisions, disseminate to the public and to fellow employees who have not joined in the association, and to public officers and representatives of government of the various states, including Alabama, and of the United States, facts, information and opinions concerning the A. F. of L. and its affiliated unions, their purposes and objectives, the problems of their members and of wage earners generally, the benefits of the National Labor Relations Act and other federal and state statutes and the rights guaranteed thereby, and the harmful effects to organized labor of any and all legislation which is not considered beneficial to organized labor.

(Record P. 250)

* * *

34. On the basis of the experience which I have had during the past fifty years as a union member and union official, and especially as the President of the A. F. of L., I am fully and completely acquainted with the activities

that must be engaged in by every international union and its local unions in connection with the organizing of employees into membership, the administration of the affairs of the international unions and their local unions and their relations with employers. These activities which I shall describe are an integral part of the existence, operation, and functioning of each international union and its local unions. All of the facts which I shall set forth are the same in regard to and are applicable to all of the national and international labor unions affiliated with the A. F. of L. plaintiffs in this action, and their respective local unions and members.

(Record P. 251)

* * *

35. It is the objective of all labor organizations, including the plaintiffs herein, to negotiate and bargain with persons employing members of such organizations with respect to wages, hours and working conditions of the members of said unions and pertaining to the other matters affecting or threatening the economic standards or the mutual welfare of the members of such unions; to obtain collective bargaining agreements with such employers and to secure the interests in such agreements of clauses requiring employees to become and remain members of the labor organization involved.

(Record P. 255)

APPENDIX II

Shortly after the Board's General Counsel ruled that the provisions of Section 9(h) of the Act did extend to the C. I. O. and A. F. L., some of the officers of the C. I. O. announced that they would not file the required affidavits, as did Mr. John L. Lewis, then an officer and Vice-President of the A. F. L.[1] Soon thereafter at a convention of the A. F. L. the A. F. L. Constitution was amended, over Mr. Lewis' vigorous opposition, so as to remove from him and the other Vice-Presidents of the A. F. L. their titles.[2] Prior to the Board's reversal of its General Counsel's ruling, attorneys for the A. F. L. obtained an informal conference with the members of the Board and urged that the General Counsel's ruling be reversed.[3]

Two days later the International Brotherhood of Electrical Workers, a Union affiliated with the A. F. L., filed with the Board an administrative appeal from a ruling which had been made by the Board's Fifth Regional Director in conformity with the earlier ruling of the Board's General Counsel.[4] On October 7, 1947, the Board, without a formal hearing, rendered an ex parte decision on the question at issue *Northern Virginia Broadcasters, Inc.*, 75 NLRB 11.[5]

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[1] Preliminary Report of the Joint Committee on Labor-Management Relations, S. Rept. No. 986, 80th Cong., 2d Sess., pp. 10-12.

[2] Official Report of Proceedings of the American Federation of Labor, San Francisco, 1947, pp. 482-505.

[3] Daily Labor Reporter, September 16, 1947, No. 181-A-1.

[4] Daily Labor Reporter, September 14, 1947, No. 183-A-1.

[5] In an article describing the circumstances surrounding this decision Mr. Denham, the Board's General Counsel, says: "The first difference with the Board involved the Taft-Hartley requirement of non-communist affidavits from officers of a union and from 'the

The annual convention of the C. I. O. was scheduled to commence on October 13, 1947. In advance of this convention anti-communist unions in the C. I. O. announced that they would insist upon a "show-down" in the convention to force compliance by the C. I. O. with Section 9 (h) of the Act, in order that they should no longer be deprived of the facilities of the Board. Upon the Board's ruling in the *Northern Virginia Broadcasters* case being announced, however, the "show-down" by the anti-communist and pro-communist forces failed to develop.[6] Thus, was lost an opportunity for the accomplishment of Congress' purpose, the weeding out of Communist influence.

---

officers of any national or international labor organization of which it is an affiliate or constituent unit.' By agreement with the same two holdover board members as to what the rule would be, I announced that officers of the A. F. L. and C. I. O. would have to sign. The air was at once filled with brickbats.

"C. I. O. officials protested that not a single C. I. O. union could make use of the law because of the presence of Ben Gold, a Communist Party leader, among the C. I. O. officers. A. F. L. officials complained that none of their unions could use the NLRB machinery because of John L. Lewis, a vice-president, who wasn't a commie but was too stubborn to sign. My answer to both of them was, 'Well, the only thing to do is to get rid of those fellows. That's what the law is for.'

"They didn't like that, and went to see members of the Board. A day or so later, one of the Board members called to advise me that he hadn't understood what we had agreed upon, and that he would have to withdraw from the agreement. The next day the second member came to say he had understood it thoroughly, but that he would have to pull out too." (Saturday Evening Post, Dec. 30, 1950, "And So I Was Purged" by Robert N. Denham as told to Stacy V. Jones, pp. 23, 73.)

[6] Daily Labor Reporter, October 7, 1947, No. 196-A-3. "What promised to be an explosive issue at C. I. O.'s 1947 convention—compliance . . . by filing . . . affidavits with the National Labor

Relations Board—is knocked down to the status of an academic . . . discussion by action of the Board's General Counsel in abandoning his rule that top C. I. O. (and A. F. L.) officials must submit these affidavits. Already in the air at A. F. L.'s convention at San Francisco, the issue would have been posed to C. I. O.'s convention next week. . . . For C. I. O., Denham's reversed rule is a boon. Had that ruling stood until next week, there would have been a left-right fight at the convention . . ."

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

NO. 425

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

HIGHLAND PARK MANUFACTURING COMPANY
Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

MEMORANDUM FOR THE RESPONDENT IN ANSWER TO REPLY BRIEF FILED BY THE NATIONAL LABOR RELATIONS BOARD

WHITEFORD S. BLAKENEY
Charlotte, North Carolina
Attorney for the Respondent

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

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Respondent

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

MEMORANDUM FOR THE RESPONDENT IN ANSWER TO REPLY BRIEF FILED BY THE NATIONAL LABOR RELATIONS BOARD

Upon the argument of this case, it is the Respondent's understanding that the Court expressed interest and surprise that the Board should be admitting that the words "labor organization, national or international in scope," appearing in Section 10 (c) of the Act, include and refer to the CIO and AFL and that the Board should be at the same time contending that the words "national or inter-

national labor organization," appearing in Section 9 (h) of the Act, do not include or refer to the CIO and AFL.

It is the Respondent's further understanding that the Court invited the Board to make clear whether it does stand both upon the former admission and the latter contention. The Board has now filed with the Court a short "Reply Brief" in which it does make clear that such is exactly its position. The Board says (Bd. Reply Br., p. 5) that:

> "It appears that by the words 'affiliated with a labor organization, national or international in scope' Congress intended to refer to the AFL or CIO . . ."

Indeed the Board could hardly deny that it has heretofore clearly conceded that the phrase "labor organization, national or international in scope" as used in the Statute does include the CIO and AFL. In the Brief which it filed in the Court below the Board said (p. 40):

> "It is clear once again that when Congress intended to refer specifically to the AFL or CIO, it described them . . . as labor organizations 'national or international in scope' . . ."

Likewise in its own decision in *Carpenter Steel Company*, 76 NLRB 670, the Board definitely accepted this phrase as encompassing and applying to "a national federation," which it now says the CIO is. And in its main Brief in this Court the Board also conceded (p. 113) that "when Congress desired in the Statute to refer to the AFL or the CIO . . . it used such words as . . . 'labor organization, national or international in scope' . . ."[1] Now once again

---

[1] This phrase appears only once in the Statute, viz., in Section 10 (c).

in its Reply Brief the Board, as pointed out above, reiterates this admission.

What the Board largely devotes its Reply Brief to, however, is the reargument of its contention that whereas Congress intended to include the CIO when it used the words "labor organization national in scope," it did not intend to include the CIO when it used the words "national labor organization." The Board still presents no authority and no new reasoning to support this strained proposition. And there seems to be no occasion for the Respondent now to burden the Court with a review of the reasoning and authority which refute the Board's contention. The Respondent's argument bearing upon this is developed in Respondent's main Brief (p. 4-39) and demonstrates that in relation to the admitted purpose of Section 9 (h), the scope and functions of the CIO, the language and definitions of the Act, and the holdings of this and other courts, the contention of the Board is tortuous and untenable.

In the thought that it may be of further interest, however, the Respondent, with the Court's permission will call attention to a statute, not heretofore cited, in which Congress has undeniably used the words "labor organization national in scope" as interchangeable with the words "national labor organization." Section 3 of the Railway Labor Act (45 U.S.C.A. 153) provides in part:

> "(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such *labor organizations* of the employees, *national in scope* . . .
>
> "(c) The *national labor organizations*, as defined in paragraph (a) of this section, acting each through

> the the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected . . ." (emphasis supplied)

Thus it is further demonstrated that since "labor organization national in scope" and "national labor organization" mean the same thing and the Board admits that the former includes the CIO, then so does the latter.

In concluding its Reply Brief the Board takes occasion to touch again on the subject of the union's "disability" in this case having been "cured" and makes now an additional assertion to the Court that the CIO not only complied with Section 9 (h) on a date in the past but is now in compliance.

As to this, the Respondent again believes it not appropriate to attempt to reargue what is set forth in its main Brief on this subject (pp. 55-60). Upon the reasoning and authority there developed it is clear that the Board cannot now raise the contention which it seeks to make on this point, and that in any event the "curing" of the union's "disability" is altogether irrelevant and of no effect in a case which proceeded completely through the Board in contravention of the Statute.

The fundamental point on this is that even if the Respondent violated the Act, which is earnestly denied,[2] just

---

[2] The Respondent's position upon the ultimate merits of the case is set forth in the Brief which Respondent filed in opposition to the Petition for Writ of Certiorari herein.

as truly the Board was in violation of the Act in all that it did in the case. If the Respondent is to be brought to book for disregarding the Statute, it must be done in a proceeding which does not disregard the Statute. Unlawful acts are not to be corrected by unlawful orders.

Respectfully submitted,

WHITEFORD S. BLAKENEY

Charlotte, North Carolina

Attorney for the Respondent

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

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Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF OF AMERICAN FEDERATION OF LABOR, AMICUS CURIAE

Interest in Proceedings

The American Federation of Labor, appearing amicus curiae, after having secured the consent of the parties hereto, presents argument in this brief limited to the single issue of whether or not the term "national or international labor organization" as used in Section 9(h) of the National Labor Relations Act, as amended, includes within its meaning such parent federations as the American Federation of Labor so as to require its officers to file the so-called "non-Communist affidavits." While the case before this Court involves another parent

federation, the determination of the Court in this case might well affect the interests of all American Federation of Labor affiliated national and international unions in respect to the activity of such unions during the time that the American Federation of Labor was not in compliance with Section 9(h). For this and other reasons[1], the American Federation of Labor desires to supplement the very able and exhaustive brief presented by the petitioner National Labor Relations Board by indicating very briefly the relationship between the American Federation of Labor and its affiliated national and international unions insofar as such relationship is relevant to the question of Congressional intent.

ARGUMENT

The determination of this question requires the construction of Section 9(h) of the Act, which reads as follows:

> "(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or

[1] In his letter granting consent to the filing by the American Federation of Labor of a brief amicus curiae, the Solicitor General stated:

> "The ultimate question presented for decision in this case is whether the great national federations—the A. F. of L. and the C. I. O.—are required to comply with the provisions of Section 9 (h) of the Taft Hartley Act. That is a question which is obviously of very direct concern to your organization, and one as to which counsel for the American Federation of Labor will be in a position to assist the Court with relevant information."

constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35A of the Criminal Code shall be applicable in respect to such affidavits."

The respondent contends that the term "officers of any national or international labor organization of which it is an affiliate or a constituent unit" should be construed to require not only the officers of the local unions of all internationals affiliated with the American Federation of Labor and the officers of such internationals themselves, but also the officers of the American Federation of Labor itself to comply with the provisions of Section 9(h).

That the scope of the term "national or international labor organization" is ambiguous would s n to be conclusively evidenced by the fact that two nited States Courts of Appeals (the Fourth in the instant case, and the Fifth in the case of *National Labor Relations Board* v. *Postex Cotton Mills*, 181 Fed. (2d) 919) have concluded that the language includes parent federations, while another Court of Appeals (the Court of Appeals for the District of Columbia, in *West Texas Utilities Company, Inc.*, v. *National Labor Relations Board*, 184 Fed. (2d) 233), together with the National Labor Relations Board itself, has concluded to the contrary. Since such ambiguity exists, resort to outside sources is required in order to ascertain Congressional intent, although it would appear, in case of fair doubt, that due regard for the principle of administrative expertness in the interpretation of government statutes should afford strong argument in favor of the views expressed by the Court of Appeals for the District of Columbia in the *West Texas Utilities* case. See *United States* v. *American Trucking Associations*, 310 U. S. 534.

Much of the reasoning of the Court below was predicated

on the conclusion that it was the central purpose of Section 9(h) to clear the labor movement of Communist influence and direction. With that conclusion there can be little disagreement except, perhaps, as to scope; necessarily, the effort to eliminate Communist influence relates only to those labor activities which are embraced, encouraged or protected under the National Labor Relations Act, as amended.

If, as will be shown shortly, the American Federation of Labor, as such, does not engage in collective bargaining and the calling of strikes, or in the use of other economic weapons, and does not direct or invoke such action in the national or international unions affiliated with it, or in the locals affiliated with such national or international unions,[2] then, entirely aside from all questions of syntax or semantics, it would appear that it would not have been a purpose of Congress to include the American Federation of Labor as a parent body within the meaning of the term "national or international labor organization" so as to require its officers to sign the anti-Communist affidavits.

As indicated in the brief filed herein by the National Labor Relations Board, the American Federation of Labor, which has been in existence since 1881, is a loosely knitted federation of autonomous national and international organizations of workers in various crafts, trades and industries. Its objects, as set forth in its Constitution (Article II), are primarily as follows:

---

[2] The following discussion relates only to the relationship of the American Federation of Labor to affiliated National or International Labor Unions as such. That is the situation in the case at bar where the relationship of the CIO to one of its affiliated international unions is under consideration. The discussion in this brief has no reference to the situation not here involved in which the American Federation of Labor might itself act or function as an International Union, namely, the situation in which the American Federation of Labor charters and takes action in respect to a local union which is not in turn affiliated with any national or international union. A portion of American Federation of Labor activity is directed to the formation of directly affiliated local unions called Federal Labor Unions and in respect to which the American Federation of Labor stands in much the same relationship as would an International Union to one of its own affiliated local unions.

"The establishment of National and International Trade Unions, based upon a strict recognition of the autonomy of each trade, and the promotion and advancement of such bodies.

"The establishment of Departments composed of National or International Unions affiliated with the American Federation of Labor, of the same industry, and which Departments shall be governed in conformity with the laws of the American Federation of Labor.

"An American Federation of all National and International Trade Unions, to aid and assist each other; to aid and encourage the sale of union label goods, and to secure legislation in the interest of the working people, and influence public opinion, by peaceful and legal methods, in favor of organized labor."

Over a hundred national and international trade unions are affiliated with the American Federation of Labor. Such national and international unions may have organized independently and applied to the American Federation of Labor for a charter of affiliation as an established entity or may, in the first instance, have been created by the American Federation of Labor from its own local groups in the formation of which it has been instrumental. The term "National or International Trade Unions" refers to the central organizations in a trade, craft or industry with which the local unions are affiliated. These organizations are autonomous bodies and usually have certain powers of regulation or control over their constituent local unions through their constitutions and laws in respect to the functioning of the local unions and, in particular, in respect to the functions and policies of local labor unions in relation to their dealings with employers in the process of collective bargaining and in respect to the various matters which Congress has touched upon in the National Labor Relations Act. Often, however, the local unions themselves enjoy local autonomy in many essential respects.

However, as between the American Federation of Labor and its national and international union constituents there

is no power in the American Federation of Labor to direct bargaining policies or other incidents of collective bargaining as dealt by or encompassed within the National Labor Relations Act, as amended. The American Federation of Labor does not tell any of its particular national or international affiliates, let alone any local union affiliated with that affiliate, when to seek elections or file charges under the National Labor Relations Act, how to conduct collective bargaining, how to deal with employers, when to strike and what type of strike strategy to engage in, or when to do or not to do any of the things forbidden or permitted under the National Labor Relations Act, as amended. It simply is not the function of the American Federation of Labor, vis-a-vis any particular national or international labor organization affiliated with it, to engage in collective bargaining with employers, or otherwise deal with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work within the meaning of the term "labor organization" as defined in Section 2(5) of the Act. In these matters the national and international labor organizations affiliated with the American Federation of Labor are autonomous. The foregoing facts are well known and can be presumed to be in the minds of the Congressmen who wrote and enacted the 1947 amendments to the National Labor Relations Act.

Since this is the case, no purpose under the Act in respect to ridding the American labor movement of the influence and direction of Communist labor leaders could possibly be served by requiring officials of the American Federation of Labor to sign the non-Communist affidavits as a condition precedent to the exercise by a local union affiliated with an affiliated international union of its bargaining rights under the Act.

In addition to the foregoing consideration of the structure of the American labor movement and its operations

in practical effect, it must also be remembered that, as indicated so well by petitioner board in its brief herein, the plain meaning of the words "national or international labor organization"—the meaning which is understood by all persons having any knowledge or information concerning, or experience in, the American labor movement—is that the term includes only those national or international unions which are affiliated with a parent federation, such as, for instance, in the case of the American Federation of Labor, the International Brotherhood of Teamsters, or the Brotherhood of Painters. It would be greatly stretching that meaning to include such a body of affiliated national and international unions as is the American Federation of Labor within such term, it is respectfully urged that Congress did not so intend. Certainly, it would be preposterous to deprive the thousands of local affiliates of the American Federation of Labor affiliated national and international unions throughout the country of bargaining privileges and protections under the National Labor Relations Act, as amended, because at any particular time one or more officers of the overall body, the American Federation of Labor, have not signed the non-Communist affidavits.

It is respectfully submitted that for the reasons set forth herein, as well as for the many compelling reasons set forth in the brief of the respondent Board, the decision below should be reversed.

Respectfully submitted,

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NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

HIGHLAND PARK MANUFACTURING COMPANY,
Respondent.

BRIEF OF TEXTILE WORKERS UNION OF AMERICA AS *AMICUS CURIAE*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 425

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

HIGHLAND PARK MANUFACTURING COMPANY,
Respondent.

BRIEF OF TEXTILE WORKERS UNION OF AMERICA AS *AMICUS CURIAE*

Preliminary Statement

A. The Interest of the Amicus

Textile Workers Union of America, hereinafter referred to as "T. W. U. A.", is a labor organization affiliated with the Congress of Industrial Organizations, hereinafter referred to as "C. I. O." Until August 23, 1945, T. W. U. A. was a national labor organization, with members only in the United States. On that day it chartered its first local union of textile workers in Canada. It is now, consequently, an international labor organization of approximately 400,000 members who are organized, as required by the

T. W. U. A. Constitution, into local unions. The great bulk of the membership resides in the United States. The jurisdiction of the T. W. U. A. is defined in Article III of its Constitution to embrace

> "all workers employed in or about places of business engaged in the processing by hand or machines, including dyeing, bleaching, printing and finishing of cotton, wool, silk, flax, jute, paper and any other natural or synthetic materials in their original or altered state, to produce or manufacture batts, felts, yarns, cordage, threads, fabrics or other forms into textile or allied products including but not limited to hosiery, knit goods, lace, carpets, cordage, fabricated textile products and by-products of synthetic materials manufactured by textile or independent plants."

Highland Park Manufacturing Company is engaged in the manufacture of cotton textile products. The cotton textile industry is concentrated along the Eastern seaboard and 80 percent of it is located in the Southern states. The Southern cotton textile industry is relatively unorganized; 85 percent of those employees are not members of any union. This extraordinary absence of labor organization is in such striking contrast to the degree of organization in other major industries that the United States Senate has conducted an intensive study of labor-management relations in the cotton textile industry. The evidence summarizing the position of the Southern cotton textile industry is found in *Hearing Before the Sub-Committee on Labor-Management Relations of the Committee on Labor and Public Welfare, United States Senate, 81st Cong., 2d Sess., Part 2, December 7, 1950,* pp. 33, 58, 86.

The jurisdiction of the Courts of Appeals for the Fourth and Fifth Circuits cover practically all of the states in which the major portion of the cotton textile industry is located, and in which T. W. U. A., the charging union in the instant case, is most active and interested. Enforcement of National Labor Relations Board cease and desist orders in these two circuits are of vital concern to the

T. W. U. A., inasmuch as most of those orders are in cases in which T. W. U. A. is the charging party. A large number of cases are now pending before the Board; many of those cases were initiated by charges filed prior to the time that the officers of the C. I. O. had complied with the filing requirements of Section 9(h) of the National Labor Relations Act. Both of those Courts of Appeals have held that despite compliance with Section 9 by T. W. U. A., the non-compliance of the C. I. O. deprived the Board of power to issue a complaint based upon a charge filed by T. W. U. A., the Fourth Circuit in the instant case and the Fifth Circuit in *N. L. R. B.* v. *Postex Cotton Mills*, 181 F. 2d 919. If the decisions of the Courts below were to stand unreversed it would leave unredressed grave injustices in the largest industry of the South.

B. The Opinion Below

Although T. W. U. A. was the first international union affiliated with the C. I. O. to comply with Section 9(f), (g) and (h) of the *Labor-Management Relations Act, 1947*, the Court of Appeals held that the failure of the C. I. O. to comply with Section 9(h) deprived the N. L. R. B. of power to issue a complaint and proceed further to remedy unfair labor practices. The decision of that Court is reported as *National Labor Relations Board* v. *Highland Park Manufacturing Co.*, 184 F. 2d 98.

The Court reasoned that C. I. O. was required to file because, in the terms of Section 9(h), it was a "national or international labor organization of which it (T. W. U. A.) is an affiliate or constituent unit". The Court found: "The C. I. O. is unquestionably a national labor organization and the T. W. U. A. is admittedly affiliated with it." It also found that there was no ambiguity in the language of the statute and thus no occasion for resort to rules of construction. It did, however, examine the statute in the light of some of those rules and found no reason to change its conclusion.

ARGUMENT

I. The legislative history, ante and post-enactment, revealed a congressional intent to exclude federations of national or international unions from the filing requirements of Section 9(h).

The Court of Appeals believed the terms "national or international labor organization" were not ambiguous. We agree that the terms are not ambiguous. We disagree, however, with what that Court thought the terms meant. We think that those terms are terms of art clearly understood in the field of labor-management relations to include only those labor organizations which are engaged in collective bargaining relations with employers and to exclude those organizations, such as federations of unions, which are not engaged in such relations with employers. Although, like the Court of Appeals, we find no ambiguity in the terms, and no need to resort to the canons of statutory construction, it would nevertheless appear that Congress understood those terms as terms of art and that the entire statutory scheme expresses such a congressional understanding.

A. The terms "national or international labor organization" exclude federations of such organizations.

The term "labor organization" is a synonym for "labor union". A national or international labor union is a labor organization which is national or international in scope. International unions must, of course, be distinguished from federations of unions such as the Congress of Industrial Organizations or the American Federation of Labor. In turn, such federations of national or international unions must be distinguished from federations of federations such as the International Confederation of Free Trade Unions or the World Federation of Trade Unions. Also to be distinguished are such organizations as the International Labor Organization.

Unions in the United States are differentiated as national or international, depending upon whether they admit members outside of the United States. Most international unions of the United States derive that characterization because they admit Canadian members. It would be apposite here to quote from the Constitution of Textile Workers Union of America (reprinted in its entirety in the Appendix of this brief) to indicate the manner in which Textile Workers Union of America describes itself and its structure.

ARTICLE I: "The name of this *International Union* shall be the Textile Workers Union of America (TWUA)."

ARTICLE II, Section 1: "This *International Union* is dedicated to the principle of industrial unionism."

ARTICLE II, Section 2: "The *International Union* shall accomplish the foregoing purposes by * * *."

ARTICLE III: "The jurisdiction of this *International Union* shall embrace * * *."

ARTICLE IV: "The headquarters of the *International Union* shall be located in New York City, N. Y."

ARTICLE V, Section 1: "The supreme governing body of the *International Union* shall be its convention whose decisions shall be final."

ARTICLE VI, Section 1: "The general officers of the *International Union* shall consist of a General President, an Executive Vice-President and a General Secretary-Treasurer."

ARTICLE VII, Section 1: "The Executive Council shall have general supervision over the affairs and properties of the *International Union*. It shall execute the decisions of the conventions and, between conventions, shall be the supreme governing body of the *International Union*."

ARTICLE VIII, Section 1: "The membership of the *International Union* shall be organized into local unions."

ARTICLE IX, Section 1: "Seven or more workers who are members of, or eligible for membership in the *International Union* may apply for a charter as a local union and upon receipt of a charter shall constitute a local union."

An examination of constitutions of other national and international unions will reveal the same use of these terms of art and the commentators have likewise treated national and international unions as distinct from federations of such unions: Philip Taft, *Economics and Problems of Labor* (Stockpole Sons, 1942), p. 494; Lloyd G. Reynolds, *Labor Economics and Labor Relations* (Prentice-Hall, Inc., 1949), p. 143; Florence Peterson, *American Labor Unions* (Harper and Brothers, 1945), pp. 41, 57; Albion G. Taylor, *Labor Problems and Labor Law* (Prentice-Hall, Inc., 1938), pp. 69-70. The relationship between the federations and the national or international unions is frequently referred to by the term "parent federation". The term is misleading because the federations are, if terms of consanguinity are to be used, rather the children of the member internationals. But even terms of consanguinity are misleading since the relationship between the federations and the internationals are so frequently transitory. The reports of this Court are studded with the history of the United Mine Workers of America, which has had various affiliations and which in the last seventeen years was a member of the American Federation of Labor, then of the Committee for Industrial Organization, then of the Congress of Industrial Organizations, then independent, then returned to the fold of the American Federation of Labor and then, a few years ago, departed that fold and returned to independent status. The transitoriness of these affiliations was recognized by Jack Barbash in *Labor Unions in Action* (Harper and Brothers, 1948), pp. 28-29:

> "The meaningful story of the American Labor movement is essentially the story of the international unions. The international union on the whole is a self-contained unit. Without the international unions, the federations have no meaning and not much substance. The reverse is not true. The international unions can and have functioned without affiliation to the federations."

B. Congress intended to require affidavits only from those officers of unions which had an impact on collective bargaining relationships or strikes.

The purpose of the affidavit requirements of Section 9(h) was to eliminate the possibility of political strikes by unions under the control of officers who adhered to the Communist or other totalitarian ideology. Whatever one may think of the effectiveness of the statute in carrying out the congressional intent, it surely may not be presumed that Congress deliberately chose an ineffective method bearing no relation to its purpose. Congress sought out the locus of power in the unions as it affected collective bargaining and strikes. When the constitutionality of Section 9(h) came before this Court, it reviewed the purpose of Congress and it noted, throughout its opinions, that Congress was directing its attention to the power relationship within the unions. The majority opinion of Mr. Chief Justice Vinson is illuminating in this respect.

American Communications Association v. *Douds*, 339 U. S. 382, 388.

> "One such obstruction, which it was the purpose of Section 9(h) of the Act to remove, was the so-called 'political strike'. Substantial amounts of evidence were presented to various committees of Congress, including the committees immediately concerned with labor legislation, that Communist leaders of labor unions had in the past and would continue in the future to subordinate legitimate trade union objectives to obstructive strikes when dictated by Party leaders, often in support of the policies of a foreign government. And other evidence supports the view that some union leaders who hold to a belief in violent overthrow of the Government for reasons other than loyalty to the Communist Party likewise regard strikes and other forms of direct action designed to serve ultimate revolutionary goals as the primary objectives of labor unions *which they control.*" (Emphasis supplied, footnote omitted.)

The final three words of that quotation emphasize that the congressional purpose was to strike at the power relationship within the union. And in the same opinion reference was made to the fact that Congress might well have believed that totalitarians would "carry that objective into their *conduct of union affairs* by calling political strikes • • •" (*Id.*, at 407, emphasis supplied). And Mr. Justice Jackson directed his attention to the same point when he referred to the "labor leverage" of the Communist Party and said that the "membership is not likely to entrust its bargaining power, its records, and its treasury to such hands" (*Id.* at 431).

We now turn to the Constitution of the Textile Workers Union of America, to examine the locus of power. Article V, Section 1, provides that the supreme governing body shall be the convention, and Article VII, Section 1, provides that the Executive Council shall be the supreme governing body between conventions. Turning more specifically to the provisions concerning collective bargaining and strikes, we find:

"ARTICLE XVI. COLLECTIVE AGREEMENTS

SECTION 1. Negotiations for collective agreements shall be subject to supervision by, and their terms and conditions shall be subject to the approval of the General President.

SECTION 2. The union shall be the exclusive representative of each member for the purpose of collective bargaining and the negotiation and execution of collective bargaining agreements with employers, and is irrevocably authorized and empowered by each member to present, negotiate and settle any and all grievances, complaints and disputes arising out of the relationship between the member and his employer.

SECTION 3. The International Union and all local unions, joint boards, and subordinate organizations shall faithfully perform and fulfill their obligations and responsibilities under collective agreements.

ARTICLE XVII. STRIKES AND BOYCOTTS

Neither the International Union nor any of its local unions, joint boards or subordinate organizations, their officers or agents shall have the power or authority to induce, call, encourage, authorize, ratify or engage in any strike or to induce, call, encourage or authorize the employees of any employer to engage in any strike or concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, except as expressly authorized or ratified in writing by the General President. Such power and authority resides exclusively in the General President and he exclusively may withdraw such authorization or ratification, once given, and he exclusively may declare any strike or concerted refusal to manufacture, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, terminated at any time."

Absent is any mention of the Congress of Industrial Organizations or, for that matter, any mention of the International Confederation of Free Trade Unions with which Textile Workers Union of America is indirectly affiliated through the Congress of Industrial Organizations. Within the sphere of activity of unions from which obstructions to commerce may arise, namely, collective bargaining and strikes, the T. W. U. A. is completely free of any control or direction from the C. I. O. Consequently, no officer of the C. I. O. has any voice, power, or authority to bring on an economic strike in the textile industry, to say nothing of a political strike at which Section 9(h) was directed. It follows then that not only is there no rational relation between the filing requirements of the statute and its purpose, if construed as the Court of Appeals construed it, but that no practical result could be achieved by requiring the officers of the C. I. O. to file the affidavits as a condition precedent to the use of the National Labor Relations Board procedures by T. W. U. A. The only result

which follows from the interpretation of the Court of Appeals is a penalty imposed upon T. W. U. A. and its members even though T. W. U. A. and its officers have fulfilled the filing requirements of Section 9(f), (g) and (h), albeit under protest. We cannot conceive that such a penal purpose should be attributed to Congress.

The Court of Appeals concluded that the officers of federations of national or international unions "shape labor policies that cause the strikes to be called, and this is particularly true of general strikes or strikes having a political purpose". The record of the instant case is barren of any evidence which might support such a conclusion; the Court's only "authority" for this grossly erroneous description of the relationship between national and international unions with the federations were the quixotic notions of Board Member Gray in his dissenting opinion in *Northern Virginia Broadcasters, Inc.*, 75 N. L. R. B. 11. The legislative history is equally barren of any such evidence. In fact, it impels to the contrary conclusion. The debates make it clear that Congress was directing itself to the locus of power in those unions which sought to avail themselves of the benefits of Sections 8 and 9 of the Act. Unions which bargained collectively and conducted strikes were to be required to complete the filing requirements of Section 9(f), (g) and (h).

The necessity for requiring such filing by the labor organization as well as the national or international with which it was affiliated was to assure that all repositories of power, whether in the national or international or the local or lodge, would not escape the aim of the statute. Congress well understood that the national or international had real power in relation to its locals and that this power relationship was lacking as between the nationals or internationals and the federations. Witness Articles VII Sec. 4, VIII Sec. 4, IX Sec. 7, XIV, XVI and XVII of the T. W. U. A. Constitution.

The Act is popularly known as the Taft-Hartley Act. Both Representative Hartley and Senator Taft, in debate, explained the purpose of Section 9(h) as being directed at

those officers of labor organizations which were directly concerned with the processes of the National Labor Relations Board. Representative Hartley said in 93 Cong. Rec. 3533 (April 15, 1947):

> "It prohibits certification by the Board of labor organizations having Communist or subversive officers. If anyone doubts the need of that in the bill all you have to do is to read the testimony taken by our subcommittee in connection with the Allis-Chalmers strike in Milwaukee and you will understand that section of the bill is most in order."

Senator Taft's analysis of the Act demonstrates that he also understood Section 9(h) to be concerned only with those organizations which were moving parties in Board proceedings and that the affidavits should be required of "its" officers. After debate on the Conference Report he submitted his supplementary analysis of the Act, 93 Cong. Rec. 7002 (June 12, 1947):

> "SECTION 9(h): This provision making the filing of affidavits with respect to Communist Party affiliation by *its* officers a condition precedent to *use of the processes of the Board* has been criticized as creating endless delays. It was to prevent such delays that this provision was amended by the conferees. Under both the Senate and House bills the Board's certification proceedings could have been infinitely delayed while it investigated and determined Communist Party affiliation. Under the amendment an affidavit is sufficient for the Board's purpose and there is no delay unless an *officer of the moving union* refuses to file the affidavit required." (Emphasis supplied.)

The conclusive answer to the argument that mere affiliation with a federation or congress requires the officers of the federation or congress to file affidavits is found in the definition of "labor organization" in Section 2(5) of the Act. A labor organization is defined as one which exists for the purpose "of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of

employment, or conditions of work". The C. I. O. cannot be a labor organization in the field in which Textile Workers Union of America has jurisdiction since in the textile industry it performs none of those functions.

C. Post-enactment consideration of Section 9(h) indicated congressional approval of the Board's interpretation.

The Board decided the *Northern Virginia Broadcasters* case, *supra*, on October 7, 1947; it held that officers of federations or congresses were not required to file affidavits in order to allow their affiliated national or international unions to use the processes of the Board. On October 8, 1947, Senator Taft's comment on the Board's decision was reported in *The New York Times*, p. 6. He said that the Board's decision was "certainly not in conflict with the intention of Congress".

Section 401 of the Act provided for a special committee of the House and the Senate to make a continuing study of the effect of the Act upon labor-management relations. That committee was popularly referred to as the "watchdog committee", *Report of the Joint Committee on Labor-Management Relations*, S. Rep. No. 986, 80th Cong., 2d Sess., p. 33. In that report the committee noted that "140 national and international unions had complied with the non-Communist-affidavit requirement" (*Id.* at 10) and noted, in commenting upon compliance with Section 9(f) and (g), that the average international president was paid a salary of $10,000 per year (*Id.* at 37). Surely the Joint Committee understood that the terms "national or international" cannot refer to the federations; it was not striking an average of the salaries of only Philip Murray and William Green. At the same time the report of the committee noted that with respect to the fixing of initiation fees and periodic dues "the international unions give their constituent locals wide discretion in fixing such fees" (*Ibid.*).

More important than the Joint Committee's understanding of the terms "national or international" is the committee's specific approbation of the manner in which the Board had interpreted the Act. The report discussed the Board's decision in the *Northern Virginia Broadcasters* case (*Id.* at 11) and those other decisions of the Board in which the Board prevented labor organizations from evading the purpose of Section 9(h) by allowing other labor organizations or individuals to "front" for them (*Id.* at 13). Under the heading "Need for Amendment", the report concluded that

> "We have attempted to describe briefly the situations to which various provisions of the new law have been applied. In each instance the law has adequately provided a remedy for the abuse which Congress sought to correct" (*Id.* at 34).

In the face of such administrative construction and legislative approval, it is difficult to understand a contrary construction of Section 9(h).

D. As used in other subsections of the Act, the terms "national or international labor organizations" excludes Federations.

Section 9(f) requires the filing with the Secretary of Labor of financial reports and other information by a "labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit" as a condition precedent to the use of the Board's procedures. Section 9(g) makes provision for the annual refiling of such information. Both subsections also require that the financial reports be distributed to the membership. Obviously the terms "national or international labor organizations" in Section 9(h) were used in the same sense as in the preceding subsections. *Pampanga Sugar Mills* v. *Trinidad*, 279 U. S. 211, 218.

Section 9(f)(A) provides, in part, for reports of the following:

> "'(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;
>
> '(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;
>
> '(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;'"

It is not conceivable that the Congress intended a federation or congress to report to the Secretary of Labor the initiation fees which members were required to pay in order to remain in good standing, the qualifications for membership, the procedure with respect to the election of stewards or the authorization for bargaining demands or the ratification for contract terms or the authorization for strikes or the participation in insurance or benefit plans. The federations or congresses of national or international labor organizations have no concern with such matters. It is equally inconceivable that Congress intended to include a federation or congress in the terms "national or international labor organization" in Section 9(h), without specific indication, immediately after it had used the term in the preceding subsections in which federations or congresses could not possibly have been included.

II. The interpretation of Section 9(h) by the Court of Appeals renders that subsection unconstitutional.

In the preceding point we have demonstrated that the provisions of Section 9(f), (g) and (h) could have no application to federations or congresses inasmuch as those bodies do not act as labor organizations in the fields in which their affiliated national or international labor organizations have jurisdiction. It follows that even were those subsections to be applied to federations or congresses, the applications would serve no purpose. The C. I. O. does not call or authorize strikes in the textile industry or bargain collectively with any employers in the textile industry.

It also follows that the application of Section 9(h) to federations or congresses is wholly unreasonable, arbitrary and capricious since the inclusion of federations and congresses has no "real and substantial relation to the object sought to be obtained". *Nebbia* v. *New York*, 291 U. S. 502, 525. Because the interpretation of Section 9(h) by the Court of Appeals falls afoul of the Fifth Amendment, this Court must remedy the fatal defect in the manner indicated by Mr. Chief Justice Vinson in the majority opinion in *American Communications Association* v. *Douds*, 339 U. S. 382, 407:

> "But we see no reason to construe the statute so broadly. It is within the power and is the duty of this Court to construe a statute so as to avoid the danger of unconstitutionality if it may be done in consonance with the legislative purpose."

CONCLUSION

The decision of the Court of Appeals should be reversed and the order of the National Labor Relations Board should be enforced.

Respectfully submitted,

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APPENDIX

Constitution of Textile Workers Union of America

ARTICLE I

NAME

The name of this International Union shall be the Textile Workers Union of America (TWUA).

ARTICLE II

OBJECTS

SECTION 1. This International Union is dedicated to the principle of industrial unionism. Its objects are to unite all textile workers in the United States, its territories and Canada for the following purposes:

(a) To improve their wages and hours of work, to increase their job security and to better their other working conditions.

(b) To advance their economic, social and cultural interests.

(c) To defend and extend their civil rights and liberties.

(d) To establish peaceful and harmonious relations between its members and their employers and to increase the stability of the industry.

SECTION 2. The International Union shall accomplish the foregoing purposes by organizing the unorganized workers in the textile industry, educating its membership, negotiating collective bargaining agreements with employers, securing legislation, and by all other appropriate means.

ARTICLE III

Jurisdiction

The jurisdiction of this International Union shall embrace all workers employed in or about places of business engaged in the processing by hand or machines, including dyeing, bleaching, printing and finishing of cotton, wool, silk, flax, jute, paper and any other natural or synthetic materials in their original or altered state, to produce or manufacture batts, felts, yarns, cordage, threads, fabrics or other forms into textile or allied products including but not limited to hosiery, knit goods, lace, carpets, cordage, fabricated textile products and by-products of synthetic materials manufactured by textile or independent plants.

ARTICLE IV

Headquarters

The headquarters of the International Union shall be located in New York City, N. Y.

ARTICLE V

Conventions

Section 1. The supreme governing body of the International Union shall be its convention whose decisions shall be final.

Section 2. Regular conventions shall be held once every two years, in even numbered years at such time and place as may be determined by the Executive Council.

Section 3. Special conventions may be called at any time by the Executive Council, on its own motion.

In the event that not less than one-third of the local unions in good standing, located in at least three states, request the Executive Council to call a special convention and the Executive Council fails to do so within 30 days, the General President shall submit the question of calling such a convention to a referendum vote of the membership within 30 days thereafter. If two-thirds of the members voting, vote in favor of a special convention, the General President shall issue a call for such convention to be held not more than 90 days after the completion of the referendum. No business shall be considered by any special convention other than that specified in the call therefor.

SECTION 4. Notice of the time and place of regular conventions shall be given to all local unions, joint boards, and subordinate organizations not less than 60 days prior to the date fixed for such convention. The notice of regular conventions shall also contain a provision that local unions, joint boards and subordinate organizations must submit proposed resolutions for consideration by the convention by transmitting them to the General Secretary-Treasurer not less than five days prior to the convention and that resolutions submitted thereafter shall be subject to such rules as the convention shall adopt. Notice of the time and place of special conventions shall be given to all local unions, joint boards, and subordinate organizations not less than 30 days prior to the date of such convention.

SECTION 5. A majority of the delegates seated at a convention shall constitute a quorum for the transaction of business, but no action of the convention shall be held invalid for lack of a quorum unless the question of the absence of a quorum is raised before such action is finally taken. Unless otherwise specified in this Constitution, all decisions of the convention shall be by majority vote of the delegates present and voting at the time the vote is taken.

SECTION 6. Local unions shall be entitled to be represented at the convention by a number of delegates elected by the membership, determined as follows:

(a) Local unions having less than 200 members in good standing shall be entitled to one delegate.

(b) Local unions having 200 or more but less than 400 members in good standing, shall be entitled to two delegates.

(c) Local unions having 400 or more but less than 500 members in good standing shall be entitled to three delegates.

(d) Local unions having 500 or more members in good standing shall be entitled to three delegates for the first 500 members and one additional delegate for each additional 300 members or majority fraction thereof.

SECTION 7. Each joint board and subordinate organization having a charter from the International Union shall be entitled to be represented at the convention by one delegate.

SECTION 8. Each local union, joint board, and subordinate organization may elect alternate delegates to the convention, the number not to exceed the number of delegates to which they are entitled. An alternate may exercise all of the rights of a delegate in the absence from the convention of such delegate.

SECTION 9. For the purpose of determining the representation of local unions at the convention, the number of its members shall be deemed to be the average number on whom it paid per capita taxes to the International Union during the 24-month period ending 2 months prior to the beginning of the month in which the call to the convention is issued; or, in case of a local union chartered within said 24-month period, then from the date of its charter to the above date, or if chartered less than six months prior to

the date of the convention, then from the date of its charter to the beginning of the month in which the convention is opened.

SECTION 10. Each delegate to the convention shall be entitled to one vote. No person shall be eligible to serve as a delegate or alternate unless he has been a member of the International Union in continuous good standing for at least one year prior to the date of the convention; provided that this limitation shall not apply to delegates or alternates representing locals chartered less than one year prior to the date of the convention.

SECTION 11. No local union shall be entitled to representation at the convention which is in arrears in the payment of per capita taxes or assessments for two months or more.

SECTION 12. The general officers of the union shall be entitled to attend the convention and exercise all the rights of delegates by virtue of their offices.

SECTION 13. Each local union, joint board and subordinate organization shall be supplied with credential forms in duplicate for its delegates and alternates who shall establish their right to be seated at the convention by credentials signed by the President and Secretary of the local union, joint board, or subordinate organization which they represent, with its seal or stamp affixed thereto. Duplicate credentials shall be transmitted to the General Secretary-Treasurer at least two weeks before the date fixed for the convention.

SECTION 14. Prior to the opening of the convention, the General President shall appoint and convene, subject to the disapproval of the Executive Council, such committees as are necessary for the conduct of the affairs of the convention.

SECTION 15. Each regular convention shall elect the general officers of the International Union, 20 Vice-Presidents and three Trustees who shall be installed immediately after their election and who, except as otherwise provided by this Constitution, shall hold office until their successors are elected. The election of general officers, Vice-Presidents and Trustees shall be by a majority of the votes cast. In the event that no candidate for any office receives a majority of the votes cast, the candidate (or in the case of the election of Vice-President and Trustees, candidates equal in number to the offices remaining unfilled) receiving the lowest number of votes shall be eliminated, and the balloting shall continue until one candidate (or in the case of the election of Vice-Presidents and Trustees, candidates equal in number to the offices remaining unfilled) receives a majority of the votes cast.

SECTION 16. All expenses of delegates to the convention shall be borne by the local unions, joint boards, or subordinate organizations which they represent.

ARTICLE VI

INTERNATIONAL OFFICERS AND TRUSTEES

SECTION 1. The general officers of the International Union shall consist of a General President, an Executive Vice-President, and a General Secretary-Treasurer.

SECTION 2. There shall be an Executive Council composed of the general officers and 20 Vice-Presidents.

SECTION 3. No persons shall be eligible for nomination or election as a general officer or vice-president unless he shall have been a member of the International Union in continuous good standing for the period of not less than twenty-four months, in the case of general officers, and twelve months, in the case of vice-presidents, immediately preceding the convention.

SECTION 4. No person shall be eligible for election as a Trustee: (a) while holding office as an International Officer or on the payroll of the National Office, or (b) unless he shall have been a member of the International Union in continuous good standing for the period of not less than twelve (12) months immediately preceding the Convention.

SECTION 5. In the event of the death, resignation, or removal of the General President, the Executive Vice-President shall succeed to his office. In the event of a vacancy in any other office, the vacancy shall be filled by vote of a majority of the remaining members of the Executive Council.

GENERAL PRESIDENT

SECTION 6. (a) The General President shall be the principal executive officer of the International Union. He shall preside at conventions and at meetings of the Executive Council. He shall convene meetings of the Executive Council at least four times a year and at any time upon the request of not less than five members of the Executive Council.

(b) Subject to disapproval by the Executive Council, the General President may employ, fix the salaries of, and discharge such representatives, organizers, administrative, technical and clerical employees as may be required, all of whom shall serve under his direct supervision except as they may be otherwise assigned by him.

(c) The General President shall countersign all checks and money orders drawn on the International Union. He shall have the power to authorize a representative to audit the books and records of any local union, joint board, or subordinate organization, or to engage an accountant for such purpose. He may attend meetings of all boards and committees of the International Union, or any local union, joint board, or subordinate organization, as an ex-officio member thereof.

(d) Subject to review by the Executive Council, the General President shall determine any and all questions as to the application, interpretation or construction of the provisions of this Constitution, or parliamentary procedure or law, or rules of order.

(e) The General President shall appoint all committees not otherwise provided for by this Constitution. He shall be the custodian and manager of the union label or labels. He may assign any duty committed to him by this Constitution to any other International officer.

(f) The General President shall have such other powers, in addition to those herein mentioned, as are usual to his office.

(g) The General President shall make a full report of his activities to each convention and to each meeting of the Executive Council for their approval.

(h) The General President shall receive an annual salary of $16,000.00, payable weekly during his term of office, and for thirty days thereafter.

Executive Vice-President

Section 7. (a) The Executive Vice-President shall be the principal assistant to the General President, may act for the General President (with the right to countersign checks) in his absence, and shall perform such duties as may be assigned to him by the General President.

(b) The Executive Vice-President shall receive an annual salary of $13,500.00, payable weekly during his term of office and for thirty days thereafter.

General Secretary-Treasurer

Section 8. (a) The General Secretary-Treasurer shall act as Secretary of the convention and of all meetings of the Executive Council and shall keep a record of their

proceedings. He shall be custodian of the seal of the International Union and shall have custody of all of its books, records and papers.

(b) The General Secretary-Treasurer shall keep correct accounts of all financial transactions of the International Union and shall deposit its funds in its name in depositors or invest them in securities approved by the Executive Council. He shall submit a detailed financial statement to the Executive Council at each meeting thereof and to the convention. He shall instruct local unions, joint boards, and subordinate organizations as to the manner in which they shall keep accounts of their financial transactions and may require them to submit to him monthly reports containing such information as he may prescribe. He shall sign all checks drawn on the International Union and perform such other duties as are incident to this office.

(c) The General Secretary-Treasurer shall receive all applications for charters and shall issue the same, when signed by the General President, and countersigned by him, subject to the disapproval of the Executive Council.

(d) The General Secretary-Treasurer shall give bond in the sum of $5,000.00 or such greater sum as may be determined by the Executive Council, for the faithful performance of his duties. The premium on the bond shall be paid by the International Union.

(e) The General Secretary-Treasurer shall receive an annual salary of $12,500.00, payable weekly during his term of office, and for thirty days thereafter.

Trustees

Section 9. The Trustees shall have general supervision over the finances of the Union, shall examine the books of the Union at least quarterly, and shall report thereon to the Executive Council. The trustees shall order the books of the Secretary-Treasurer to be audited by a certified

public accountant annually, and shall submit such audit to the Executive Council and make a report thereon to each Convention.

ARTICLE VII

Executive Council

Section 1. The Executive Council shall have general supervision over the affairs and properties of the International Union. It shall execute the decisions of the conventions and, between conventions, shall be the supreme governing body of the International Union.

Section 2. The Executive Council shall have power to authorize the expenditure of the funds or the use of the property of the International Union; to borrow money and, as security, to pledge or mortgage any property of the International Union; to make guarantees; and to buy, sell, exchange, rent, lease or otherwise acquire or dispose of real or personal property.

Section 3. The Executive Council shall have power to disapprove any charters issued to a local union, joint board, or a subordinate organization.

Section 4. In the event it finds it necessary to protect the interests of the International Union the Executive Council, acting through an administrator or administrators, appointed by it, may, for a period determined by it, take possession of and administer the affairs, funds and property of any local union, joint board or subordinate organization, and assume and perform the duties of its officers or any of them.

Section 5. A majority of the members of the Executive Council shall constitute a quorum for the transaction of business at any meeting; except that it may take action, without meeting, by the written approval of a majority of

its members, after notice to all of its members of the question to be decided.

SECTION 6. Notwithstanding any provision in this Constitution, the Executive Council shall have the power and authority to make such rules and regulations in place of Article XII as in its judgment shall be advisable with respect to local unions, joint boards and subordinate organizations located outside of the United States.

ARTICLE VIII

STRUCTURE

SECTION 1. The membership of the International Union shall be organized into local unions. Local unions may consist of members within a mill, a group of mills, a city, or other area.

SECTION 2. The Executive Council may establish, define the jurisdiction of, and cause charters to be issued to joint boards composed of local unions (referred to in this Constitution as "joint boards") and other bodies of local unions, such as councils and departments representing geographical or industrial sub-divisions of the textile industry (referred to in this Constitution as "subordinate organizations").

SECTION 3. Joint boards and subordinate organizations shall adopt by-laws, rules and regulations, not inconsistent with this constitution, defining their jurisdiction, powers and duties. All by-laws, rules and regulations shall be subject to disapproval by the Executive Council.

SECTION 4. All local unions within the jurisdiction of a joint board or subordinate organization shall affiliate with such joint board or subordinate organization, unless exempt for cause by the Executive Council. No local union

affiliated with a joint board or subordinate organization shall withdraw therefrom without the consent of the Executive Council. Decisions of the Executive Council under this section shall be made only after notice and opportunity for hearing to the local unions and joint boards or subordinate organizations affected.

SECTION 5. The Executive Council may after notice and opportunity for hearing, amend the charter or jurisdiction of any local union. It may dissolve or amend the charter or jurisdiction of any joint board or subordinate organization after notice and opportunity for hearing; to the local unions, joint boards and subordinate organizations affected.

SECTION 6. No member of the Textile Workers Union of America, who is a member of the Communist Party, or of a Communist, Nazi or Fascist organization, shall be eligible for election or appointment to any office or hold any office in the Textile Workers Union of America or in any of its locals, joint boards, or subordinate organizations.

ARTICLE IX

LOCAL UNIONS, JOINT BOARDS, AND SUBORDINATE ORGANIZATIONS

SECTION 1. Seven or more workers who are members of, or eligible for membership in, the International Union may apply for a charter as a local union and upon receipt of a charter shall constitute a local union.

SECTION 2. Applications for charters shall be made to the General Secretary-Treasurer. They shall be accompanied by the charter fee of $10.00 and the required initiation fees. Subject to the disapproval of the Executive Council, a properly signed charter containing such provisions as may be prescribed shall be delivered to the applicants together with a seal.

SECTION 3. Local unions, joint boards, and subordinate organizations shall adopt by-laws, rules and regulations for their government which shall not conflict with the provisions of this Constitution or in the case of local unions with the provisions of the by-laws of the joint board or subordinate organization with which they are affiliated and shall be subject to the disapproval of the Executive Council.

SECTION 4. Each local union and joint board shall meet at least once a month.

SECTION 5. No local union, joint board or subordinate organization, their officers or agents, nor the officers (except General Officers) or agents of the International Union shall have the power to make any contract or incur any liability binding upon the International Union without the written consent thereto of a General Officer. The International Union shall not be liable under any contract or for any acts of local unions, joint boards or subordinate organizations, their officers or agents, or the officers (except General Officers) or agents of the International Union, unless specifically consented to or authorized in writing by a General Officer.

SECTION 6. Except as provided by Section 5 of Article VIII, no local union shall be dissolved so long as at least seven members object to its dissolution at a meeting called to consider the question.

SECTION 7. All books, records, funds and property in the possession or subject to the control of any local union, joint board, or subordinate organization shall be and remain the property of the International Union. In the event that the membership of any local union falls below seven, or that a local union, joint board, or subordinate organization dissolves, or withdraws, or is expelled from the International Union, the possession of all of the books, records, funds and property of such local union, joint

board, or subordinate organization shall be delivered to the General Secretary-Treasurer within twenty days thereafter.

SECTION 8. No funds of any local union, joint board, or subordinate organization shall be loaned, given, or expended to assist any seceding or antagonistic organization, or any local union, joint board, or subordinate organization which is violating this Constitution.

SECTION 9. No local union, joint board, or subordinate organization shall issue appeals for financial aid for any purpose, except with the consent of the Executive Council.

ARTICLE X

OFFICERS AND EXECUTIVE BOARDS OF LOCAL UNIONS, JOINT BOARDS AND SUBORDINATE ORGANIZATIONS

SECTION 1. Each local union, joint board, and subordinate organization shall elect a president, a vice-president, a recording secretary, and a financial secretary or such other officers as its By-Laws shall provide together with an Executive Board, consisting of these officers and such additional members as its By-Laws may provide, all of whom shall be elected at least biennially and shall hold office until their successors are elected and installed.

SECTION 2. No person shall be eligible for office in any local union, joint board, or subordinate organization or as a delegate to a joint board until he has been a member in good standing of the International Union for at least one year, unless he is a member of a local union which has been chartered for less than one year.

SECTION 3. Unless otherwise provided by the By-Laws, the president shall preside at all meetings of the local union, joint board or subordinate organization and its

Executive Board, and shall countersign all checks when signed by the financial secretary. He shall enforce By-Laws and the provisions of this Constitution. He shall appoint and be an ex-officio member of all committees, unless otherwise provided.

SECTION 4. Unless otherwise provided by the By-Laws, the vice-president shall assist the president in the performance of his duties, shall act for the president in his absence, and, in the event of a vacancy in the office of president, shall succeed to the office of president for the unexpired term.

SECTION 5. Unless otherwise provided by the By-Laws, the recording secretary shall keep correct minutes of all meetings of the local union, joint board, or subordinate organizations, conduct its correspondence and have charge of its seal which he shall attach to all documents requiring authentication.

SECTION 6. The financial secretary shall receive all monies paid to the local union, joint board, or subordinate organization, and deposit same in its name in such bank or banks as the Executive Board may direct. Unless otherwise provided by the By-Laws, he shall sign all checks drawn upon the local union, joint board, or subordinate organization. He shall keep true and accurate accounts of all his transactions as financial secretary and shall make reports thereon to the local union, joint board, or subordinate organization, its Executive Board and the General Secretary-Treasurer. On demand of the General Secretary-Treasurer, he shall make all of his books and records available for examination and audit. He shall keep a record of the names and addresses of all members of the local union or local unions and shall advise the General Secretary-Treasurer monthly of the names and addresses of all members initiated, transferred, dropped, or withdrawn during the previous month.

SECTION 7. Before entering upon his duties, the financial secretary and every other local union, joint board, and subordinate organization officer or representative charged with the handling or safe-keeping of funds, shall execute a bond for the faithful performance of his duties, in an amount fixed by the Executive Board. The General Secretary-Treasurer may require the amount of such bond to be increased whenever in his judgment it is insufficient. The premiums on bonds shall be paid by the local union, joint board, or subordinate organization.

SECTION 8. The Executive Board shall be the highest governing body within the local union, joint board, or subordinate organization, between its meetings, and shall exercise general supervision over its affairs.

ARTICLE XI

MEMBERSHIP

SECTION 1. Except as hereinafter provided, any worker employed in the textile industry shall be eligible to apply for membership.

SECTION 2. Workers having supervisory power shall be eligible to apply for membership only if their application for membership has been approved by the General President or the Executive Council, or if their application for membership is made to a local union composed of or chartered to include supervisory employees.

SECTION 3. No person who has been suspended or expelled from membership shall be eligible for membership in any local union without the written consent of the body which suspended or expelled him, or of a general officer of the International Union.

SECTION 4. No person shall be admitted to membership while he remains a member of any seceding or dual organization.

SECTION 5. No person shall simultaneously hold membership in more than one local union affiliated with the International Union.

SECTION 6. (a) Unless the local union, joint board, or subordinate organization provides a shorter period:

1. Any member who is three months or more in arrears in the payment of dues, fines or assessments shall be subject to summary suspension from all rights and privileges of membership, notwithstanding any other provision of this Constitution to the contrary.

2. Any member who is four months or more in arrears in the payment of dues, fines or assessments may be expelled and dropped from the rolls, notwithstanding any other provision of this Constitution to the contrary, provided that he is given written notice of such expulsion by registered mail not less than one week prior to the effective date thereof.

(b) A member who has been expelled for non-payment of dues, fines or assessments may be reinstated only upon payment of the regular initiation fee, together with all monies due at the time of his expulsion, unless otherwise ordered by the Executive Board of the body which expelled him.

(c) A member who has been suspended or expelled for non-payment of dues, fines or assessments, shall be afforded a hearing before the Executive Board of the body which expelled him upon the written request of such member and he shall have the right to appeal from any decision rendered in the manner provided in Article XIV.

SECTION 7. Any member in good standing may transfer his membership from one local union to another, provided

that he is eligible for membership in and complies with the provisions respecting transfers of the By-Laws governing the local union to which he seeks to be transferred.

SECTION 8. Any member in good standing may withdraw from membership upon leaving the textile industry. A withdrawal card shall be issued to such withdrawing member and he or she shall thereupon lose all rights and privileges of a member and shall be exempt from the payment of dues and assessments. A member who has withdrawn may subsequently be reinstated without the payment of an initiation fee.

ARTICLE XII

REVENUE

SECTION 1. The initiation fee for membership in the International Union shall be such sum (which shall not be in excess of $5 without the specific consent of the Executive Council) as may be fixed by each local union, joint board, or subordinate organization. Each local union, joint board, or subordinate organization shall pay to the International Union an initiation fee of $1 for each new member. The General President, with the approval of the Executive Council, shall have the power to waive the payment of initiation fees by newly formed locals, or where special circumstances so require.

SECTION 2. Local unions, joint boards, and subordinate organizations shall fix the dues of their members, which shall be payable in advance monthly or weekly. Such dues shall be not less than 50¢, if payable weekly, and not less than $2.00, if payable monthly.

SECTION 3. Each joint board or subordinate organization, and each local union not affiliated with a joint board or subordinate organization, shall pay to the International Union a per capita tax of $1.00 per month if its dues are

payable monthly, and a per capita tax of 25¢ per week if its dues are payable weekly, for each of its dues paying members. The total per capita tax due shall be paid to the General Secretary-Treasurer on or before the 10th day of each month for the dues paying members during the preceding month.

SECTION 4. The Executive Council, or subject to the disapproval of the Executive Council, the Executive Board of any local union, joint board, or subordinate organization shall have the power to levy a per capita assessment, in addition to dues, upon the members within its jurisdiction, provided that the amount and method of payment of such assessment has first been approved by the majority of those voting in a vote among the members to be subject to such assessment. The recording secretary of a local union, joint board, or subordinate organization which proposes to levy an assessment shall notify the General Secretary-Treasurer thereof at least seven days before the proposal is submitted to a vote.

SECTION 5. The payment of dues, per capita taxes and assessments by the members shall be evidenced by appropriate stamps which shall be affixed to the dues book of each member. Except with the specific consent of the Executive Council, no local union, joint board, or subordinate organization shall collect any dues or assessments without issuing stamps as a receipt therefor. All such stamps shall be issued at cost to local unions, joint boards, and subordinate organizations by the General Secretary-Treasurer and no local union, joint board, or subordinate organization shall have the power to print its own stamps for such purpose without the consent of the Executive Council.

SECTION 6. Notwithstanding anything in this constitution to the contrary, the General President may suspend any local union, joint board, or subordinate organization which fails to pay any per capita tax or assessment due to the In-

ternational Union or to any joint board or subordinate organization within two months after it is due. No local union, joint board, or subordinate organization shall be entitled to representation or other benefits in the International Union during the period of its suspension. In the event that it thereafter fails to pay such per capita tax or assessment, the Executive Council may expel such local union, joint board, or subordinate organization, from the International Union. The Executive Council may upon application of an expelled local union, joint board, or subordinate organization, reinstate its charter subject to such conditions as it may prescribe. The decision and action of the General President, and Executive Council under this Section, shall be subject to appeal as provided in Article XIV.

ARTICLE XIII

Discipline

Section 1. (a) The term "discipline" when used in this Article, shall include, without limitation, a fine, removal from office, disqualification to run for office, or suspension or expulsion from membership.

(b) Any member of the International Union found guilty of violating any provision of this Constitution, or a decision of the Executive Council, or of his subordinate organization, joint board, or local union, or of dishonesty, misconduct or conduct detrimental to the welfare of the Textile Workers Union of America, shall be subject to discipline after notice of and opportunity for hearing on charges, as provided in this Article, except that the provisions of this Article shall not apply in the case of a member summarily fined for non-attendance at meetings pursuant to the provisions of a previously adopted resolution or other act of his local union, joint board, or subordinate organization.

(c) Subject to the provisions of Sub-section (f), the Executive Board of a local union shall have power to discipline

a member or officer of such local union whom it finds guilty of any conduct set forth in paragraph (b) above.

(d) Subject to the provisions of Sub-section (f), the Executive Board of a joint board or subordinate organization shall have power to discipline any member or officer of any of its affiliated local unions, or any member, delegate or officer of such joint board or subordinate organization whom it finds guilty of any conduct set forth in paragraph (b) above.

(e) The Executive Council shall have power to discipline any member or officer of a local union, joint board, or subordinate organization, or any International Union General Officer, Vice-President, or Trustee whom it finds guilty of any conduct specified in paragraph (b) above.

(f) The Recording Secretary of a local union shall promptly transmit a copy of any charges filed with him against a member or officer of such local union to the General Secretary-Treasurer and to the Secretary of the joint board or subordinate organization, if any, with which the local union is affiliated. The Executive Council, or the Executive Board of the joint board or subordinate organization, shall have the right, by notice in writing to such Recording Secretary, to assume jurisdiction of any such charges, and, in that event, no action upon such charges shall thereafter be taken by the local union with which they were filed, but all further proceedings shall be taken by such Executive Board of the joint board or subordinate organization, or by the Executive Council, as the case may be, in the same manner as though the charges had originally been filed with it.

(g) The Secretary of a joint board or subordinate organization shall promptly transmit a copy of any charges filed with him against a member or officer of any affiliated local union, or any member, delegate or officer of such joint board or subordinate organization to the General Secretary-Treasurer. The Executive Council shall have the right, by

notice in writing, to such Secretary, to assume jurisdiction of any such charges, and, in that event, no action upon such charges shall thereafter be taken by the joint board or subordinate organization with which they were filed, and all further proceedings shall be taken by the Executive Council in the same manner as though the charges had originally been filed with it.

SECTION 2. The Executive Council shall have power, after notice of and opportunity for hearing upon charges, as provided in this Article, to suspend. expel or take such other action against any local union, joint board, or subordinate organization which it finds guilty of violating any provisions of this Constitution or decision of the Executive Council, or of conduct detrimental to the welfare of the Textile Workers Union of America.

SECTION 3. Proceedings under this Article may be initiated by any member of the International Union by filing written charges with the Secretary of the appropriate local union, appropriate joint board, or subordinate organization, or the Executive Council, as the case may be. The Secretary with whom such charges are filed shall promptly transmit a copy thereof to the accused, by registered mail, at his last known address, together with written notice of the time and place of the hearing thereon, which shall be held not less than one week after the date of the mailing of the notice.

SECTION 4. (a) Hearings shall be held by the Executive Board of the appropriate local union or appropriate joint board or subordinate organization or by the Executive Council, as the case may be. The accused shall have the right to appear at such hearings and be represented only by a member of the International Union designated by him for that purpose, who has agreed to so serve.

(b) Hearings may be held on any charge notwithstanding the failure of the accused, after being given notice pursuant to the provision of this Article, to appear thereat.

SECTION 5. Appeals from decisions rendered pursuant to the provisions of this Article may be taken in the manner provided in Article XIV by the accused or by the person filing the charge.

SECTION 6. Whenever charges have been filed with the Executive Council, or whenever it has assumed jurisdiction over the charges, the Executive Council or the General President shall have the following powers which may be exercised prior to a hearing or decision on such charges:

(a) Summarily to suspend the accused subordinate organization, joint board, local union, officer, delegate or member.

(b) To appoint a temporary officer or delegate who shall supersede and have all the powers of the accused officer or delegate and who shall serve pending the decision of the Executive Council, and (if the Executive Council finds the accused guilty) for such further periods as the Executive Council may determine.

(c) To appoint an administrator or administrators who shall take possession of and administer the affairs, funds and property of the local union, joint board, or subordinate organization whose officer or officers are the subject of charges. Such administrator or administrators shall have all the powers of the officers of such local union, joint board, or subordinate organization, and shall continue to act until the decision of the Executive Council upon such charges, and (in the event that the Executive Council finds the accused guilty) for such further periods as the Executive Council may determine.

In the event that the General President or Executive Council exercises any of the powers provided for in this Section, a hearing shall be provided at or before the next regular meeting of the Executive Council and the Executive Council shall render its decision upon the charges with reasonable dispatch.

ARTICLE XIV

Appeals

Section 1. Appeals from decisions under Article XIII may be taken:

(a) From the decision of the Executive Board of a local union to the Executive Board of the joint board or subordinate organization, if any, with which such local union is affiliated, and from its decision (or if there is no such joint board or subordinate organization, then directly) to the Executive Council.

(b) From the decision of the Executive Board of a joint board or subordinate organization to the Executive Council.

Section 2. The Executive Council shall, within its discretion, have jurisdiction and power to entertain, hear, and decide appeals from the acts, failure to act, or decision (other than decisions, under Article XIII) of any General Officer, local union, joint board, subordinate organization, or the Executive Board of such local union, joint board, or subordinate organization.

Section 3. Any decision of the Executive Council, including a decision rendered under the provisions of Section 1 and Section 2 of this Article, may be appealed to the Convention.

Section 4. All appeals shall be in writing, shall contain a brief statement of the facts and the grounds for the appeal and shall be filed with the Secretary of the body to which they are addressed within thirty days after the rendition of the decision from which the appeal is taken. Upon application, during or after the thirty-day period for filing appeals, the body to which the appeal is addressed may, in its discretion, extend the time within which an appeal may be filed and heard by it. Appeals to the Convention shall

be filed with the General Secretary-Treasurer and extensions of time to file an appeal to the Convention may be granted by the General President or the Executive Council. The Secretary with whom the appeal is filed shall promptly transmit copies thereof, together with a notice of the date of hearing thereon, which shall be held not less than one week from the date of the notice, to the parties to the appeal. The provisions of Sections 4 and 5 of Article XIII providing for the procedure on hearings on charges shall apply to hearings on appeals taken under this Article, except appeals to the Convention which shall be heard under the rules of the Convention.

SECTION 5. An appeal taken under this Article shall not operate to stay the action of decision appealed from unless the body to which the appeal is taken shall so order, but the Executive Council or the General President may stay the decision of the Executive Council pending appeal to the Convention.

SECTION 6. No member shall institute any civil action, suit or proceeding in any court or before any administrative body, against the International Union, any of its local unions, joint boards, or subordinate organizations, or any officer or member of the International Union or of any of its local unions, joint boards, or subordinate organizations on account of any controversy for which a remedy by trial or appeal is provided for in this Constitution unless and until he has first exhausted all such remedies of trial and appeal.

ARTICLE XV.

TRIAL OR APPEAL BOARD.

SECTION 1. In all cases where charges have been filed with the Executive Council, or where it has assumed jurisdiction over the charges, or where an appeal is pending

before it, the General President may, upon the written request of the accused or the person filing the charge or appeal sent by registered mail within five days after the filing of the charge or the appeal, or at his own discretion at any time, designate and appoint a subdivision of not less than three members of the Executive Council, who shall hold a hearing on the case within the locality in which the case arose or as near thereto as the General President shall direct.

SECTION 2. In all cases pending before it, the Executive Council may assign the case to be heard by a subdivision of not less than three of its members appointed by the General President.

SECTION 3. A subdivision of the Executive Council appointed under this Article shall be known as a Trial Board or Appeal Board, as the case may be, and the provisions of Sections 4 and 5 of Article XIII providing for the procedure on hearings shall apply to hearings held by the Trial or Appeal Board.

SECTION 4. The Trial or Appeal Board shall, after a hearing, render a report and recommendation on the appeal or charges to the Executive Council, which shall then render its decision. The decision of the Executive Council may accept, reject or modify the recommendation and shall be subject to appeal to the Convention as provided in this Constitution.

SECTION 5. A hearing before the Trial or Appeal Board shall constitute a hearing before the Executive Council under the provisions of this Constitution and there shall be no further hearing before the Executive Council in cases heard by a Trial or Appeal Board unless the Executive Council shall so direct, notwithstanding any provision in the Constitution to the contrary.

ARTICLE XVI

Collective Agreements

Section 1. Negotiations for collective agreements shall be subject to supervision by, and their terms and conditions shall be subject to the approval of the General President.

Section 2. The union shall be the exclusive representative of each member for the purpose of collective bargaining and the negotiation and execution of collective bargaining agreements with employers, and is irrevocably authorized and empowered by each member to present, negotiate and settle any and all grievances, complaints and disputes arising out of the relationship between the member and his employer.

Section 3. The International Union and all local unions, joint boards, and subordinate organizations shall faithfully perform and fulfill their obligations and responsibilities under collective agreements.

ARTICLE XVII

Strikes and Boycotts

Neither the International Union nor any of its local unions, joint boards or subordinate organizations, their officers or agents shall have the power or authority to induce, call, encourage, authorize, ratify or engage in any strike or to induce, call, encourage or authorize the employees of any employer to engage in any strike or concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, except as expressly authorized or ratified in writing by the General President. Such power

and authority resides exclusively in the General President and he exclusively may withdraw such authorization or ratification, once given, and he exclusively may declare any strike or concerted refusal to manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, terminated at any time.

ARTICLE XVIII

Amendments

This constitution may be amended at any convention by the afirmative vote of two-thirds of the delegates voting on the question, provided copies of the proposed amendment are distributed among the delegates prior to the vote.

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Supreme Court of the United States

October Term, 1950

No. 425

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

HIGHLAND PARK MANUFACTURING COMPANY,
Respondent.

BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE*

ARTHUR J. GOLDBERG
General Counsel

THOMAS E. HARRIS
Assistant General Counsel

Congress of Industrial Organizations
718 Jackson Place, N. W.
Washington 6, D. C.

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IN THE

Supreme Court of the United States

October Term, 1950

No. 425

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

HIGHLAND PARK MANUFACTURING COMPANY,
Respondent.

BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE*

The Congress of Industrial Organizations (C.I.O.) submits this brief *amicus curiae* to the Court in the genuine belief that it will aid the Court in the resolution of the question here presented. The parties have consented that this brief be filed, and letters so indicating have been submitted to the Clerk.

THE QUESTION PRESENTED

The question in this case arises out of sections 9 (f), (g), and (h) of the Labor-Management Relations Act. These sections establish certain conditions precedent to action by the National Labor Relations Board on petitions or charges filed with it by unions. Sections 9 (f) and (g) require the filing of organizational and financial reports with the Department of Labor. Section 9 (h) requires the filing of non-Communist affidavits.

These conditions are imposed both directly and indirectly. It is required, in the first place, that the labor organization filing the petition or making the charge shall itself comply

with these conditions. In the majority of cases, this first requirement refers to the local union representing the employees in the particular collective bargaining unit. In addition to the condition applicable to the organization directly involved, there is a second requirement—that "any national or international labor organization of which such labor organization is an affiliate or constituent unit" also comply. We thus have two required layers of compliance—(1) the labor organization directly involved and (2) any *national or international* labor organization of which that organization is an affiliate.

The issue in the case arises from the fact that in the American labor movement there are many additional organizational levels than the local and international. The precise question is whether the statute requires compliance not only by the locals and by the international unions with which they are affiliated but also by the federations with which the international unions are in turn affiliated. Not directly involved but tangentially present are the further and similar questions as to whether *all* organized layers with which a local may be affiliated, directly or indirectly—the city, county, state, regional, industrial, national and foreign organizations—must also comply in order for that local to utilize the processes of the Board.

The case does *not* involve any question as to whether the C.I.O. and A.F.L.—the two major federations—are themselves "labor organizations." That is to say, if the C.I.O. were to act as a "labor organization" and itself file a petition or a charge, there is no question that it, as the "labor organization" involved, would be required to comply with sections 9 (f), (g), and (h). The questions here arise only when the C.I.O. is admittedly not the "labor organization" involved and it concerns only the secondary requirement that the "national or international labor organization" with which the charging labor organization is affiliated also must comply. The question, in short, is whether the C.I.O. bears the relationship of a "national or international" to the unions which are affiliated with it.

Resolution of this question necessarily involves consideration of the sense in which the words "national or international" are used in the statute and consideration of whether

the C.I.O. bears the relationship thus described to the unions which compose it. Both phases of the question require an understanding of the structure of the American labor movement for their proper decision.

THE STRUCTURE OF THE AMERICAN LABOR MOVEMENT

The International Unions

The history of the American labor movement is, in large part, a history of the organization of separate, autonomous unions in each craft or industry. Such unions predated the existence of any country-wide federations, and the history of the federations is largely a history of affiliation and disaffiliation by pre-existing trade unions.[1]

The first unions were local unions. The first nation-wide federation of significance—the National Labor Union—was a loose federation of city centrals, national unions, local unions and various non-union social reform organizations. After the demise of the National Labor Union in the last decades of the 19th century the definitive structure of the American labor movement was established by the failure of the Knights of Labor and the success of the American Federation of Labor.

The Knights of Labor had an integral structure. The national organization exercised direct control over smaller geographic units which were, in turn, composed of local units. Some of the local units were limited to a particular trade and others were general in their jurisdiction. The lines of authority and control over both types went directly from the local units to the general area organizations and then to the General Assembly of the Knights of Labor. It was, really, one big union.

The American Federation of Labor, on the other hand, was not conceived of as one national union but as a federation of unions, each national in scope. Nor did the A.F.L. begin to build from local union units. It was an alliance of national

[1] The history is summarized in Brumm, *Brief History of the American Labor Movement* (1947) published by the Bureau of Labor Statistics, United States Department of Labor, which contains a bibliography of more detailed studies.

unions already in existence. Those unions preserved their identity, their autonomy, their jurisdictions and their sovereignty. They did not create one new union but an alliance of existing unions and a mechanism for the creation of new unions which would enter into the alliance as equals.

The basic structure which characterized the American Federation of Labor was maintained by the Congress of Industrial Organizations. The cause of the split between the A.F.L. and the C.I.O. was a disagreement as to whether, in organizing the mass production industries, the jurisdictional lines between the separate, autonomous unions should be drawn on an industry or a craft basis. There was no disagreement concerning the basic assumption that the federations as such were not unions but only associations of independent unions. Indeed, that assumption was underlined by the fact that the C. I. O. was itself simply a new federation of pre-existing autonomous international unions which had left the American Federation of Labor.

The basic structural characteristic of the American labor movement thus is, and has been since the disappearance of the Knights of Labor and the I.W.W., the organization of employees in each craft or industry into separate independent associations confined to that craft or industry and nation-wide in scope. These associations are customarily and usually referred to as national or international unions. The union is national when its membership is confined to the United States. It is international if it admits to membership persons employed in Canada. In both cases, the unions are American and not "international" in the normal use of that word. Compare, for example, the International Labor Organization or the International Confederation of Free Trade Unions, which are truly international in the sense that they are composed of representatives of unions in the various nations.

Most American unions, as a matter of fact, describe themselves as international unions whether or not they have Canadian members, and the term "international," used as a noun, has come to be the common way of distinguishing the nation-wide unions from their constituent local unions on the one hand and the two great federations on the other.

Thus, the directory of affiliated unions published by the American Federation of Labor lists the following different kinds of affiliates:

National and International Unions
Departments
State Branches
City Centrals

The international unions listed include such unions as:

The Journeymen Barbers, Hairdressers and Cosmetologists' *International* Union of America
International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America
Bricklayers, Masons and Plasterers *International* Union of America
Cigarmakers' *International* Union of America
Coopers' *International* Union of North America
International Photo Engravers Union of North America
International Glove Workers' Union of America
The Granite Cutters' *International* Association of America
International Hod Carriers, Building and Common Laborers' Union of America
International Molders and Foundry Workers Union of North America
International Printing Pressmen's and Assistants' Union of North America
International Brotherhood of Pulp, Sulphite and Paper Mill Workers of the United States and Canada
Seafarers *International* Union of North America
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America
Upholsterers' *International* Union of North America

Similarly, the Congress of Industrial Organizations contains such unions as:

The *International* Union, United Automobile, Aircraft, and Agricultural Implement Workers of America
The *International* Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America
Oil Workers *International* Union
Playthings, Jewelry, and Novelty Workers *International* Union
The *International* Woodworkers of America

Other unions do not use the term "international" in their formal names but are nevertheless international unions in the

sense in which that term is used in trade union parlance. Thus, the constitution of the United Steelworkers of America is entitled "Constitution of International Union, United Steelworkers of America," and it provides in Article I:

> "This Organization shall be known as the United Steelworkers of America, hereinafter also referred to as the International Union."

Similarily, the constitution of the Retail, Wholesale and Department Store Union provides in Article I:

> "This organization, international in scope, shall be known as the Retail, Wholesale and Department Store Union. (It is hereinafter also referred to as the International Union or International.)"

Again, Article I of the constitution of the United Furniture Workers of America provides:

> "Section 1. This organization shall be known as the United Furniture Workers of America, hereinafter also referred to as the International Union."

On the other hand, there are independent, A.F.L. and C.I.O. unions which are known as "national unions." See, e.g., *National* Maritime Union (C.I.O.); *National* Union of Marine Cooks (Ind.); the *National* Marine Engineers Beneficial Association (C.I.O.); *National* Federation of Post Office Clerks (A.F.L.); *National* Farm Labor Union (A.F.L.); *National* Association of Master Mechanics and Foremen of Navy Yards and Naval Stations (A.F.L.); American Federation of State, County, and Municipal Employees (A.F.L.).

As the listings above indicate, the "international" unions greatly outnumber the "national" unions and, hence, the term "international" has acquired the common usage previously indicated. Whether the short-hand form of that usage—i.e., "international" used as a noun to describe both "national" and "international" unions—or the full "national or international union" is used, it is clear that what is being referred to is a nation-wide organization of employees in a particular craft or industry, as distinguished from local unions on the one hand and the great federations on the other.

Local and International

Since the national and international unions are independent bodies, governed by their own constitutions and laws, their internal structures vary greatly. There are, however, certain basic similarities.

The aspect of the internal organization of the internationals which is significant here is the relationship between the internationals and the subordinate bodies which may file charges or petitions with the National Labor Relations Board. In almost all internationals there are such subordinate bodies.

In most unions the subordinate bodies are known as locals, although they are sometimes referred to as lodges or branches. These locals may be shop or plant locals—that is, their jurisdiction may be limited to the employees in a particular collective bargaining unit—or they may be amalgamated locals, containing employees of various employers within the geographical area. The local composed only of employees in a particular plant or shop is perhaps typical of the industrial unions organized in the C.I.O., while the amalgamated local is more usually found in the craft A.F.L. unions.

In some internationals the locals have considerable autonomy. They negotiate collective bargaining contracts, call strikes, apply to the N.L.R.B. for certifications in their own names and generally operate with little interference by the international. In this kind of an international, the local union very often has a name of its own, descriptive of its particular jurisdiction, and describes itself as "affiliated" with the international union.

In other internationals, on the other hand, the locals occupy a much more subsidiary position. Contracts are negotiated by the international union and strikes are called by it. In this type of union, certification from the Labor Board is usually sought by the international in its own name and unfair labor practice charges filed by it. The locals are usually known simply as "Local No. —" and may properly be called constituent parts of the international. See *Harker* v. *McKissock* (N. J. Super. Ct., App. Div.) 27 LRRM in which the court contrasted the two types of internal union structure and found the union in question, a C.I.O. union, to be of the affiliated type.

In addition to the locals, there are often intermediate subsidiary organizations, sometimes organized on a geographical basis—as in the case of the Joint Councils of the Teamsters Union—and sometimes on an industrial basis—as in the case of the departments of the C. I. O. Textile Workers Union.

Despite this variation in internal structure, there are certain distinguishing characteristics which normally exist in the relationship of the subordinate bodies to the internationals. These characteristics are present whether the structure is of the loosely affiliated or the closely integrated type, and perhaps can be seen most clearly if the constitutions of two typical unions are examined. The A.F.L. Teamsters' Union (International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America) is perhaps the most prominent example of the loosely affiliated type. Its locals are often given separate, identifying names which describe the particular craft jurisdiction of the local. See, e.g., *Cooperative Industries, Inc., Employer . . . and General Warehousemen's Local Union No. 418, affiliated with I.B.T.C.W. & H. of A., A.F.L.*, 85 NLRB 1258; *Service Trade Chauffeurs, Salesmen, and Helpers, Local 145 (also known as Food, Beverage and Express Drivers Local Union No. 145), affiliated with I.B.T.C.W. & H. of A., A.F.L. and The Howland Dry Goods Company*, 85 NLRB 1037; *Paraffine Companies, Inc., Employer and General Warehouse, Food Processors, and Cannery Workers Union, Local 655, affiliated with I.B.T.C.W. & H. of A., A.F.L., Petitioner*, 85 NLRB 325. Normally, the locals—and not the international—appear on the ballot and contracts are made by it rather than the international. And, as in the above cases, the local is often described as "affiliated" with the Teamsters international.

An example of a more integrated type of union is the United Textile Workers Union, the union involved in this case. Its locals are usually known simply by their local numbers. Normally, the international—and not the local—appears on the ballot and contracts are negotiated in the name of the international. The local is best described as a constituent of rather than as affiliated with the international.

Taking the Textile Workers and the Teamsters as examples

of the integrated and affiliated types of union structures, we find the following:

A) *Collective Bargaining.* Whatever degree of autonomy a local or other subordinate body may be given, ultimate control of the conduct of collective bargaining is normally retained by the international. In the more loosely organized internationals, the control may be supervisory only. In the more integrated unions, the international may itself conduct or participate in all collective bargaining and be a contracting party. The types of control are exemplified by the unions selected as examples.

The constitution of the Teamsters' Union provides that a local must submit to a Joint Council and to the General President of the Union a copy of any wage proposal to be made to an employer. (Art. XII, Sec. 12(a)) No contract entered into between a local and an employer is valid until approved by the General President of the International or unless approval is specifically waived. (Art. XII, Sec. 12(d)) It is further provided that the International can compel a local union to arbitrate a controversy with an employer not covered by a local union agreement. (Art. VI, Sec. 3)

The Textile Workers' constitution provides simply that negotiations for collective agreements and their terms and conditions shall be subject to the approval of the General President of the International. (Art. XVI, Sec. 1)

B) *Strikes.* The degree to which an International Union controls strikes again varies between different international unions, but, again, some degree of control is normally always provided for. Where locals are empowered to call strikes, the procedure which must be followed by the local, including necessary voting procedures before the strike is called, are normally prescribed in the international constitution. Sometimes it is provided that no strike shall be called without the approval of the international union. Where such direct control is absent, indirect controls are provided for by the provision of an international defense fund which pays benefits to striking locals only when the strike has received the approval of the international organization.

In the Teamsters Union, a detailed voting procedure is pro-

vided which must be complied with before a local can call a strike. (Art. XII, Sec. 1) There is no provision specifically requiring the approval of the international union before a strike can be called but it is provided that notification shall be given to the Joint Council and to the General President prior to the institution of a strike. (Art. XII, Sec. 1 (c)) Additional controls of strikes are provided for by virtue of the defense fund. If a strike has the approval of the international union, weekly strike benefits are payable. (Art. XII, Sections 2–5) Even if the strike is an approved strike and benefits are paid to the striking union members, the General President of the international is authorized to declare the strike at an end and thus to terminate the financial aid of the international union. (Art. XII, Sec. 8)

The Textile Workers Union contains an explicit provision forbidding any units of the union to engage in any strike or concerted action without the authorization and approval of the General President of the international. The General President is also given the authority to declare that any strike or other type of concerted action shall be terminated. (Art. XVII)

C) *Internal organization of locals.* The basic organizational structures of the locals and of other subsidiary bodies are normally prescribed by the international. The international constitution of each of the unions here being examined states what officers there shall be, how they shall be elected, and what their duties shall be. (Teamsters Const. Art. XXI; Textile Workers Const., Art. X)

In addition to prescribing the structure of the local unions, the international constitutions normally provide that the international may discipline local unions and their officers. Thus the constitution of the Teamsters Union provides elaborate procedures for the preferring of charges against local unions, officers, and members and for the trial of such charges (Art. XVIII). The Textile Workers Constitution contains similar provisions (Art. XIII).

In addition to punishment by expulsion from membership or removal from office, international union constitutions normally provide for suspension or revocation by the international of the local union charter. In the event of such suspension

or revocation, the international officers are given authority to take over the property and the affairs of the local union, to appoint administrators, and to sequester the property of the locals. Such provisions are contained in the constitutions of the Teamsters Union (Art. VI, Sec. 6) and the Textile Workers Union (Art. XIII, Sec. 6).

The financial affairs of the local are normally closely supervised by the international. Thus the Teamsters Union Constitution prescribes detailed procedures which must be followed by the local secretary-treasurers in collecting funds, keeping books, and paying bills (Art. XXII). In addition, the international reserves the right to audit and inspect the books of any local union (Art. X, Sec. 12). Similar, although less detailed, provisions are contained in the constitution of the Textile Workers Union (Art. X, Sec. 6, Art. XII, Sections 2 and 5).

In the Teamsters Union and in the Textile Workers Union the international constitution provides a minimum schedule of dues, but the ultimate determination of the dues to be paid by individual members is left to the local unions. (Teamsters const., Art. XIV, Sec. 2; Textile Workers const., Art. XII, Sec. 2). In other unions, such as the United Steelworkers of America, the amount of the individual membership dues is specified in the international constitution and cannot be varied by the local (Art. XIV, Sec. 1).

D) *Inter-Local Relationships.* Since the members of local unions within the internationals are also members of the international, the international constitution normally prescribes the qualifications for membership (Teamsters const., Art. II, Sec. 2; Textile Workers const., Art. XI; Steelworkers const., Art. III). It is normally also provided that a member of the international union may transfer his membership from one local to another without payment of initiation fees or loss of the rights attendant upon membership in the union. (Teamsters Const., Art. XVII; Textile Workers Const., Art. XI, Sec. 7; Steelworkers Const., Art. XV). These provisions demonstrate that whatever the internal structure of the international union, membership in the particular local gives an individual rights not only within the local but also within the international and its other locals.

The Federations And Their Subordinate Units

The C. I. O. and the A. F. L. are associations of unions—not unions. This much is, of course, obvious from the organization charts. What is not so obvious is the fact that the relationship between federation and affiliated international is not in any way comparable to that between international and local. It is not just a repetition, at a higher echelon, of the relationship of parent and subsidiary which exists between an international and its locals.

On the contrary, the relationship is one of free association of independent, autonomous entities. The international unions exist independently of the federation and they are not subject to its authority. They manage their affairs in accordance with their own varied constitutions without any power of interference by the federation. They have the power to affiliate and disaffiliate at will. They manage their own collective bargaining, without supervision or control by the federations. And they each control completely the method of election to office and the qualifications for office.

The federations, furthermore, do not exist simply at a higher level above the internationals. They have their own local subdivisions, in relation to which they act very much as the internationals act toward their subdivisions. The precise character of the federations, and the scope of their functions can, indeed, best be seen by analyzing their own internal composition. Since both of the major federations are similarly constituted we will examine here the structure of the C. I. O., the organization directly concerned.

The C. I. O. is, as its name indicates, an organization composed of industrial unions—a congress of industrial organizations. These organizations are of three principal types: (1) national and international unions, (2) industrial union councils and (3) local industrial unions. There is a fourth, transitional type, known as an organizing committee.*

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* The American Federation of Labor has the same composition. It comprises (1) national and international unions, (2) State Federations and local Central Labor Unions and (3) Federal and Local Trade Unions. The fourth, or transitional, type of organization is known in the A.F.L. as a council.

The national and international unions have already been discussed. The other types will be described briefly.

The industrial union councils are local or regional sub-federations. For each state in which unions affiliated with the C. I. O. exist, there is a state industrial union council. This council is a federation of local unions within the state.[3] There are, also, local or county federations which similarly are composed of the local unions within these small geographical areas. In the C. I. O., these are known as local industrial union councils.[4]

These sub-federations perform at state and local levels the same functions as are performed by the C. I. O. and the A. F. L. at the national level. The relationship between the sub-federations and the locals affiliated with them is thus a microcosm of the relationship between the federations and their affiliated internationals. But the relationship can perhaps be seen more clearly at the local or regional level, since there exist superior bodies to which both the sub-federations and the local unions are subordinate and hence the division of authority is more explicitly stated.

The sub-federations are completely subordinate to the national federations. They exist only by virtue of charters granted by the federations and are governed by rules promulgated by them. The C. I. O. constitution provides, in Art. III, Sec. 4:

> "Industrial Union Councils shall be organized upon a city, state or other regional basis as may be deemed advisable by the Executive Board and shall be composed of the locals of national unions, international unions and organizing committees, and local industrial unions and local industrial union councils within the territorial limits of such council. . . . The Executive Board shall issue rules governing the conduct, activities, affairs, and the suspension and expulsion of industrial union councils. The decision of the Executive Board may be appealed to the convention, provided, however, that pending the appeal the decision shall remain in full force and effect."

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[3] Similar state sub-federations are known in the A.F.L. as state federations.

[4] In the A.F.L., they are known as Central Labor Unions.

These sub-federations, while thus being entirely subordinate to the national federation, are composed of affiliated locals which are entirely subordinate to their own international unions (or in the case of the local industrial unions to be described below, to the C. I. O.).

While such a relationship may appear to create a confusion of authority, no such confusion exists because the distinction between the functions of the federation and the internationals is carried over to the local level. The sub-federations exist to provide such aid to their affiliated local unions as those local unions may request and to co-ordinate and consolidate the legislative and public relations work of those unions. They are service agencies for the affiliated locals and their internationals. Thus the C. I. O. Rules governing Industrial Union Councils, issued by the C. I. O. Executive Board pursuant to its constitutional power to govern these sub-federations, provide:

> "16. Councils shall lend all possible assistance to the organizing activities of local unions and their parent organizations affiliated directly or indirectly to the C. I. O., or of the C. I. O., but only at the request or with the approval of such local unions, parent organizations, or the C. I. O. Councils shall take no action in matters related to organizing in conflict with the requests or instructions of any such local parent organization, or the C. I. O.
>
> "17. No Council shall interfere in the internal affairs of any local union or its parent organization, affiliated directly or indirectly to the C. I. O., nor shall any Council assume powers over local unions or Councils which properly belong to the parent organizations thereof or to the C. I. O."

These rules indicate clearly the primacy of the international unions and the lack of any authority in the federations to interfere with either collective bargaining or the internal affairs of the internationals.

It should be noted that the rules above quoted do include reference to requests *by the C. I. O.* to aid organizing activities of local unions and to the powers over local unions which properly belong "to the C. I. O." These provisions relate to the third

type of organization affiliated with the C. I. O.—the directly chartered local unions, known as local industrial unions or, for short, "L.I.U.'s".*

The local industrial unions are local unions which have no international. They are unions—that is they have individual members whom they represent in collective bargaining, they engage in strikes, and otherwise perform the functions of unions. But they are part of no international. With respect to them the C.I.O. *does* perform the functions of an international. Thus Article III, Sec. 3 of the C. I. O. Constitution provides that:

> "The Executive Board shall issue rules governing the conduct, activities, affairs, and the suspension and expulsion of local industrial unions."

and those rules do provide for control by the C. I. O. of collective bargaining, strikes, etc., by the L. I. U.'s.

The existence of these local industrial unions does not contradict the picture of the federations as central, consultative bodies of independent, autonomous trade unions. These local unions are temporary organizational devices used only pending the establishment of internationals. One of the functions of the federations is to aid in the organizing of the unorganized in jurisdictions in which no international exists. This is sometimes done by setting up local unions directly subordinate to the federations and, when a sufficient number of such locals are established, relinquishing control over them to newly organized international unions.

Both the A. F. L. and the C. I . O. were formed by preexisting independent international unions. These unions were extremely jealous, as they are today, of their internal autonomy within their respective jurisdictions. It was not intended, in creating the A. F. L. or the C. I. O. to create a new union which would compete with the internationals, or to lay the basis for "one big union." The authority of the federations to set up directly chartered locals was, therefore, strictly circumscribed and it was made mandatory that the federation's role

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*In the A.F.L. such unions are known as Federal or Local Trade Unions.

as a union be strictly temporary. Thus, the constitution of the American Federation of Labor provides, in Art. IX:

> "Sec. 3. The Executive Council shall use every possible means to organize new National or International Trade or Labor Unions, and to organize Local Trade and Federal Labor Unions, and connect them with the Federation until such time as there is a sufficient number to form a National or International Union, when it shall be the duty of the President of the Federation to see that such organization is formed.
>
> "Sec. 4. When a National or International Union has been formed, the President shall notify all Local Unions of that trade to affiliate with such National or International Union, and unless said notification be complied with, within three months, their charters shall be revoked."

And the constitution of the C. I. O. similarly provides, in Art. III, Sec. 3:

> "It shall be the duty of the Executive Board to combine local industrial unions into national or international unions or organizing committees."

That this is the manner in which the federations operate is exemplified by the rapid turnover in L. I. U. charters in the C. I. O. This is shown in the annual reports submitted by the President of the C. I. O. to its convention and published as part of the convention proceedings. In 1947 there had been 391 Local Industrial Unions in existence.[6] The 1948 report shows that during the year 151 locals were transferred to international unions, 15 new locals were chartered, and 37 were cancelled, leaving a total of 218.[7] The 1949 report shows 37 new L. I. U.'s, 20 transfers to internationals and 29 cancellations, leaving a total of 206.[8] The 1950 report shows 90 new L. I. U.'s, 57 transfers, and 15 cancellations, leaving a total of 224.[9] Thus, in a three year period a total of 142 local industrial unions had been chartered, and 228 had been transferred to internationals or organizing committees. The number in existence at the end of the period—224—was less than the

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[6] Proceedings, 9th C.I.O. Constitutional Convention (1947), p. 71.
[7] Proceedings, 10th C.I.O. Constitutional Convention (1948), p. 66.
[8] Proceedings, 11th C.I.O. Constitutional Conventional (1949), p. 82.
[9] Proceedings, 12th C.I.O. Constitutional Convention (1950), p. 96.

number which had been transferred during the period. And that number—224—was infinitesimal compared with the 70,000 estimated labor union locals in the United States[10] or even the 2,000 locals in the Steelworkers union or the 1,000 locals in the Auto Workers union.[11]

Directly chartered local unions thus serve as a mechanism by which new internationals are organized in industries or trades in which no international exists. They are transient phenomena. The total membership of the L. I. U.'s directly chartered by the C. I. O. is less than 1 percent of the membership of the international unions affiliated with it.

The transition from local industrial union to fully autonomous national or international union cannot be accomplished overnight. Hence, there is an intermediate form of organization known in the C. I. O. as an organizing committee and in the A. F. L. as a council. These organizations perform the functions of an international. Organizing committees in the C. I. O. issue charters to locals, elect officers and executive boards and often hold conventions in the same way as international unions. They exercise the same control over the locals and over the collective bargaining process as do internationals. They differ from internationals only in that their form of organization is temporary, pending the establishment of a permanent international. In some cases the C. I. O. retains some measure of control during this transitional period. In others, the organizing committee is entirely independent but some of its officers are appointed by the C. I. O.

The pattern of organization in unorganized industries is thus, first, directly chartered local industrial unions, second, organizing committees, and third, fully autonomous national or international unions. This has been the pattern of such C. I. O. unions as the Packinghouse Workers, the Retail, Wholesale and Department Store Workers Union and others. The first stage in this development—the directly chartered L. I. U.—is relatively minor. As soon as there exist a sufficient number of L. I. U.'s to warrant the creation of an organizing committee or an international, the L. I. U.'s disappear.

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[10] U. S. Department of Labor, *Directory of Labor Unions* (1950), p. 3.
[11] Proceedings, 12th C.I.O. Constitutional Convention (1950), pp. 96, 99.

Indeed, in most cases, particularly where a large scale organizational campaign is begun from scratch, the first stage is omitted altogether and an organizing committee is established in a field where there are few or no local industrial unions. This was, in fact, the manner in which such major C. I. O. unions as the United Steelworkers of America and the Textile Workers Union were established.

Federation and International

An examination of the constitution of the C. I. O. immediately demonstrates the sharp distinction between the relationship of the C. I. O. to its subordinate bodies (the local and regional federations and the few directly chartered locals) and its relationship to the affiliated internationals. The constitution gives to the Executive Board of the C. I. O. plenary control over the subordinate bodies. But it gives no powers to the C. I. O. with respect to the international unions.

Thus, there are no provisions concerning collective bargaining, no provisions concerning strikes, no provisions concerning the internal organization of the internationals. These matters are not C. I. O. matters. They are union matters, controlled by the internationals without supervision or direction by the central body with which those organizations are affiliated.

The C. I. O., indeed, does not even have power to definitely adjust conflicts between internationals. The only provision dealing with that subject is Section 6 of Article VI, which provides only for recommendations by the C. I. O. Executive Board:

> "Sec. 6. Any dispute between two or more affiliates may be submitted to the Executive Board which shall make such recommendations to the parties in dispute as it shall deem advisable and report to the convention."

The only power the C. I. O. has with respect to an affiliated international is to terminate the affiliation. It cannot dissolve an international, or take its property, or suspend its officers, or in any other way interfere or direct the international's affairs. If there is conflict between a particular international and the other internationals affiliated with the C. I. O. and

this conflict cannot be resolved, then the C. I. O.'s only power is to dissolve the affiliation. It cannot, as can an international with its locals, suspend the offending body, sequester its property and direct its affairs.

Similarly, the C. I. O. cannot prescribe the qualifications for office in an affiliated international, although international unions can and frequently do so with regard to their own locals. Specifically, the internationals can make Communists ineligible for local union office.[12] The federations have no such power with regard to the internationals. The federations can control only eligibility for federation office. If a particular international chooses to permit Communists to hold international or local union office, the federation can only refuse to permit such officers to serve also as federation officers[13] or it can regard this as a sufficient basis to make the international ineligible for continued association in the federation.[14] But other than this it has no authority to discipline the international. Compare Art. VI, Sec. 6, of the A. F. L. constitution which gives the President disciplinary authority, but only with respect to "State Federations of Labor, City Central Labor Unions, and Local and Federal Labor Unions," i.e., only the subordinate units of the federation itself.

The Fourth Circuit, in the instant case, emphasized the role of the A. F. L. and the C. I. O. in the formulation of the no-strike policy during the second world war. Examination of the material relied on, however, emphasizes the nature of the C. I. O. and A. F. L. as herein set forth. The no-strike policy was evolved at a labor-management conference called on December 11, 1941, by President Roosevelt. Invited to this conference were twelve representatives each from labor and from business. As a result of this conference a three-point program was agreed upon, which included the pledge that there should be no strikes or lockouts and that all disputes should be settled by peaceful means.[15]

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[12] See Constitution, Textile Workers Union of America, Art. VIII, Sec. 6; Constitution, United Steelworkers of America, Art. III, Sec. 4.
[13] C.I.O. Constitution, Art. VI, Sec. 8.
[14] C.I.O. Constitution, Art. VI, Sec. 10.
[15] See Termination Report, National War Labor Board, Vol. 2, p. 1038.

The labor members at this conference were selected by the C. I. O. and the A. F. L. And, it is true that the A. F. L. and C. I. O. unions generally adopted the no-strike policy which was agreed upon at the conference. But this imports no more concerning the authority of the A. F. L. and the C. I. O. with respect to strikes and collective bargaining than does the fact that the employers of the country generally followed the policies recommended and agreed to by the industry representatives at the labor-management conference, who had been selected by the chairman of the Business Advisory Council to the Department of Commerce. In both cases, it was recognized that the representatives were acting as advisers only. The no-strike policy, and the no-lockout policy, were general statements of intention made by a representative sample of leaders of separate unions and separate employers. The C. I. O. and the A. F. L. had no more power to bind their affiliated unions than would the Chamber of Commerce or the National Association of Manufacturers have the power to bind their associated employers.

The contrast between the role of the international and the role of the C.I.O. can be seen in another way, by comparing the financial assets and expenditures of the C.I.O., with those of its affiliated internationals. In the fiscal year 1948-49, the total expenditure of the C.I.O. was under 3 million dollars and its net worth was well under 2 million dollars.[16] During approximately the same period, just *one* of the internationals affiliated with the CIO—the Steelworkers—had an annual rate of expenditure of almost 9 million dollars and a net worth of almost 8 million.[17]

Similarly, dues of members of international unions affiliated with the CIO average about $2 per month. Usually about half of this sum is retained by the locals and half paid over to the international. Yet the per capita payments of the internationals to the CIO are only ten cents per month. L. I. U.'s, on the other hand, pay a per capita tax of one dollar per month to the CIO (Constitution, Art. VIII, Sec. 2), since, with re-

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[16] *C.I.O. News*, December 19, 1949, p. 2.

[17] *Steel Labor*, January, 1949, p. 11; July, 1949, p. 11.

spect to them the CIO performs the function of an international.

These financial figures emphasize what the organizational structure makes clear—that it is the internationals which are the unions and which do the work. The federation is a relatively small organization which has the purpose of providing central legislative, research, publicity and organizational services.

Again, most internationals have full-time officers, paid by the international and subject to its orders alone. Most C. I. O. officers, on the other hand, are not full-time officers and are not paid by the C. I. O. but by the international unions in which they hold office. The President of the United Steelworkers, for example, also serves—without compensation—as President of the C.I.O. The General Counsel of the Steelworkers also serves—without compensation—as General Counsel of the C.I.O. Eight of the nine vice-presidents of the C. I. O. are officers of international unions and perform their C. I. O. functions without compensation in addition to their full-time positions as international union officers. The only officer of the C. I. O. at this time who does not hold elective office in an international union is the C. I. O.'s Director of Organization, Allan S. Haywood, and he has been elected as chairman of various organizing committees.

Having thus described the structure of the C. I. O. and the lack of authority of the C. I. O. over its affiliated internationals, the question naturally arises as to what the C. I. O., as distinguished from its affiliated international unions, actually does.

It does not—except with regard to the relatively insignificant number of L.I.U.'s—engaged in collective bargaining or call strikes. What it does do can best be seen by listing the various headquarters departments of the CIO and stating briefly, their functions.

Department of Research & Education: publishes the CIO Economic Outlook and various pamphlets concerning current national economic and social problems, consults and cooperates with governmental statistical economic and social agencies, cooperates with the educational programs of the individual

international unions, and conducts, by arrangement with the Economic Cooperation Administration, orientation classes for foreign visitors.

International Affairs Department: Handles, with the C. I. O. International Committee, the participation of C. I. O. in international organizations such as the International Confederation of Free Trade Unions and maintains contacts, with the CIO Latin American Affairs Committee, with South and Central American labor organizations.

Publicity Department: Publishes the C. I. O. News, handles newspaper and radio publicity, and distributes material prepared by other departments and committees.

Organization Department: Is in charge of organizing in unorganized industries, directs local industrial unions.

Department of Industrial Union Councils: Supervises and coordinates the work of the local and state sub-federations.

Legislative Department: Serves to co-ordinate the work of the legislative representatives of the various internationals and to press for the CIO legislative program. It also transmits to the internationals reports on the legislative situation.

Legal Department: Represents the CIO in court and before governmental agencies and consults with and advises the officers and the departments of the CIO. Gives advice and assistance, where requested, to the legal representatives of the affiliated internationals.

In addition to these staff departments there are several committees which do specialized research, publicity, legislative and representation work:

Political Action Committee
Committee to Abolish Discrimination
International Affairs Committee
Latin American Affairs Committee
Health, Safety and Welfare Committee
Regional Development and Conservation Committee
Social Security Committee
Committee on Taxes
Community Services Committee
Housing Committee
Maritime Committee
Organizing Committee (Southern drive)

The work of all of these committees and departments, as well as of the field staff which operates under the Organization Department, is under the direction of the President of the C. I. O. and follows the policies determined by the Executive Board and the annual conventions.

The Executive Board is "composed of one member from each affiliated national and international union and organizing committee." (Const., Art. IV, Sec. 3). The industrial union councils and local industrial unions are not represented on it.

The convention is composed of delegates from the various affiliated and subordinate organizations. Representation is based on membership. Larger unions are allotted 8 delegates for the first 100,000 members and one additional delegate for each additional 50,000. Smaller unions have proportionately larger representation. L. I. U.'s and industrial union councils are represented at the convention by one delegate each. (Art. VII, Sec. 6.) Voting strength at the conventions is not determined by the number of delegates, however. On roll call votes, each affiliated international and organizing committee is entitled to one vote for each member. L.I.U.'s are also entitled to one vote for each member. (Art. VII, Sec. 5.) Since the total membership of the L. I. U.'s is less than 1% of the total membership of the internationals and organizing committees, their voice in convention decisions is correspondingly small. Industrial union councils are entitled to one vote per council. (Art. VII, Sec. 5.)

Summary

The Court of Appeals for the District of Columbia, after analysis of a federation, analogized it to "a trade association made up of individual employers. Like the latter, it seeks to coordinate policy, provide encouragement, and perform certain staff functions such as research and publicity."

The analogy is only partially accurate. It would be more accurate to describe a labor federation as being similar to the United States Chamber of Commerce or the National Association of Manufacturers. These are not associations limited to a particular trade or industry but over-all employer associations containing many types of industries. They do not, as trade associations often do, take part in setting collective bargaining

patterns or even in setting patterns of doing business. Their function is to present to the public and to the legislature the position of businessmen on matters affecting business generally and to perform research and similar staff functions with regard to the interests of business generally rather than particular trades or industries.

Similarly, the C. I. O. is engaged in representing to the public and to legislative bodies the position of labor on general policy matters and in performing research and similar staff functions with regard to the interests of labor generally. The C. I. O. does not establish collective bargaining policies for its affiliated unions. Nor does it perform the specialized research or other staff work which is normally done as an aid to bargaining in particular industries. Such matters, like the studies and statistics with regard to a particular industry which trade associations collect, are normally performed by the individual unions, most of which have their own research departments, publicity departments, legal departments, legislative representatives, etc.

The C. I. O. does differ, of course, from trade associations and from national associations of businessmen in many respects. Its organizing activities have no precise parallel on the employer side. But with respect to the point in issue here—the relationship between the federations and their affiliated internationals—the parallel is remarkably close. There are other, looser, nation-wide labor associations such as the Confederated Unions of America, in which the parallel with the employer associations may be even more precise.[18] All of them, whatever the degree of looseness of the affiliation, have these characteristics—they are not unions but associations of unions, they do not bargain collectively or supervise or direct collective bargaining, they do not call strikes or terminate them, they do not control in any way the elections of officers or the conduct of the internal affairs of their associated unions, they do not—in short—perform any of the functions with which the National Labor Relations Act is concerned.

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[18] A description of these organizations is contained in the Directory of Labor Unions (1950) published by the United States Department of Labor.

THE APPLICATION OF THE STATUTE

The Board's Construction

Sections 9 (f) (g) and (h) require compliance (1) by the labor organization which files a petition or makes a charge and (2) by "any national or international labor organization of which such labor organization is an affiliate or constituent unit."

The great majority of petitions and charges filed by unions with the National Labor Relations Board are filed by locals. A survey of the titles of the union-initiated cases in the last published volume of NLRB reports (Vol. 88) discloses that out of 233 representation petitions, 144 were filed by locals or other geographically limited subordinate units and 72 by international.[19] Two were filed by the American Federation of Labor on behalf of federal locals. Examination of other volumes of NLRB reports discloses a similar distribution.

In the majority of cases, therefore, the application of the statutory requirement poses no difficulties. The petitioning local must comply and the national or international union with which it is affiliated must also comply. If there is no national or international and one of the federations is temporarily performing the functions of an international with respect to that local, then both the local and the federation which is acting *in loco parentis* must comply.

No compliance in addition to these two layers specified in the statute are required. Neither the intermediate organizations (such as district, regional, or departmental organizations) between the local and the national or international union nor the federations, committees or associations with which the international may be affiliated are required to comply.

The situations would appear to be somewhat different when the international itself files the petition or makes a charge, as is the case here. It could be argued that in such cases only the international would be required to comply. The Board, however, has taken the view that this would encourage evasion of the statute. Where locals could not or would not comply the

[19] The 15 petitions filed by independent unions are not included in this break-down.

petition would simply be filed in the name of the international. Hence the Board has taken the view that the two layer compliance requirement of the statute must be satisfied even if the petition is filed in the name of the international. That is, if a local exists in the particular bargaining unit the international will be regarded as acting on its behalf and the local, as well as the international, will be required to comply. *United States Gypsum Co.*, 77 NI RB 1098; *Lane-Wells Company*, 77 NLRB 1051. This rule was held to apply even where the bargaining unit was nationwide and all bargaining, strikes, etc., were alleged to be directly managed by the international, the locals being merely convenient administrative units. Even there the Board held that every local which admitted to membership employees within the collective bargaining unit must comply. *Prudential Insurance Co.*, 81 NLRB 295.

The Board has thus required two-level compliance in every case,* irrespective of whether the international or the local files the petition or the charge. It has not required three, four or five level compliance because the statute plainly does not go beyond the internationals and the subsidiary units engaged in representing employees.

The standard which the Board has used in determining whether federation compliance is required in a particular case is whether there is in existence an autonomous international with complete and independent control of collective bargaining. If there is such an organization, and it has complied, and the local involved has also complied, the Board has not required, in addition, compliance by the organizations with which the international may be affiliated, if those organizations have no control directly or indirectly over collective bargaining. Where there is no international and the federation substitutes for it, compliance by the federation has been required. And where the organization purporting to perform the functions of an international is in fact subject to the direction and control of the federation, there too federation compliance has been required.

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* Where there is no local in existence, of course, the Board does not require that one be created and in such situations there is only one level of compliance. Thus the National Maritime Union (C.I.O.) has no locals and only the national union is required to comply.

The latter type of case is particularly significant. In *American Optical Co.*, 81 NLRB 453, the Board refused to process a representation petition filed by the Optical Workers Organizing Committee (CIO). It found that this organizing committee did not have independent status and autonomy but was subject to the direction and control of the C. I. O. Hence it concluded that C. I. O. compliance was a condition precedent to the processing of the petition and dismissed it. In *Chesapeake and Potomac Telephone Co. of Virginia*, 82 NLRB 810, however, a different result was reached with regard to a differently constituted organizing committee. In this case the Board found that the organizing committee in fact did have the powers and the independence of an international union and that it was not subject to C. I. O. direction or control. Hence it concluded that compliance by the local organization and the organizing committee was sufficient.[a]

The Board has thus uniformly applied the concept that in requiring compliance by "national or international" labor organizations the statute required compliance by the nationwide organizations in which reside the ultimate control of collective bargaining, of internal organization and of strike policy. In the few cases where it found that those powers were exercised by the federations it has refused to process petitions in the absence of compliance by the federations. Where it found national or international unions which exercised such powers independent of the federations it has considered compliance by the local and the international as sufficient.

Alternative Constructions

If the line which the Board has drawn is discarded completely, then a particular union could not file a petition with the Board unless every organization, whether engaged in collective bargaining or not, with which the particular union was affiliated also complied. There are many such organizations, both national and international in scope. At the world level

[a] Lest it be considered that the result was unrealistic, it should be noted that the organizing committee in that case performed every function of an international and in fact shortly thereafter became an affiliated international. In the past, organizing committees have gone so far as to disaffiliate from the C.I.O. See *Edwin Bell Co.*, 46 NLRB 619.

there are the International Labor Organization, the Trade Secretariats, the International Confederation of Free Trade Unions and others. At the national level there are such labor organizations as the United Labor Policy Committee. Compliance of the C. I. O. and the A. F. L. as federations can be required in addition to compliance by the locals and internationals only if the compliance of all of such organizations be also required. Once the standard adopted by the Board is abandoned there seems to be no line other than that the organization in question be national or international in scope.

There is one possible construction which would include the A. F. L. and C. I. O. but exclude other similar organizations. Under such construction, compliance by the federation would be required in a particular case even though the federation did not occupy the position or perform the functions of a national or international union in that case for the reason that it did perform such functions in other cases. Thus, the fact that C. I. O. compliance is a condition precedent to the processing of petitions filed by directly chartered local industrial unions would be used to require its compliance as a condition precedent to the processing of petitions filed by other local unions who are controlled, not by the C. I. O., but by their internationals. The argument seems to be self-defeating. C. I. O. compliance is required when an L. I. U. petitions precisely because the C. I. O. performs the functions of an international with regard to that L. I. U. The fact that it is required to comply in those cases would seem to preclude a requirement of compliance where the functions of an international with regard to a local are in fact performed by the local's international and not by the C. I. O.

Such a construction would also lead to most peculiar results. The officers of the C. I. O. are all officers of international unions or organizing committees. In their capacity as union officers they are subject to all the pressures Congress intended to be applied to induce compliance with Sections 9 (f) (g) and (h). The requirement that they all comply with Section 9 (h) before any union affiliated with C. I. O. can be considered in compliance would lead to the peculiar result that the failure of the United Steelworkers of America to comply would dis-

qualify the United Textile Workers and all of its locals, since the President of the Steelworkers is also President of the C. I. O. Any one of the ten major unions within the C. I. O. thus could prevent any other union affiliated with the C. I. O. from complying—since each is represented by a C. I. O. officer. On the other hand, if all of the major internationals did comply, the requirement of Section 9 (h) would automatically be satisfied without the requirement that the individual officers also comply as officers of the C. I. O.

At the present time the C. I. O. is in compliance *as* C. I. O. But all of its officers are also in compliance with Section 9 (h) as officers of international unions or organizing committees.

A list of the C. I. O. officers and their union office follows:

Name	C. I. O. Office	Union Office
Philip Murray	President	President, United Steelworkers of America
James B. Carey	Secretary-Treasurer	President, International Union of Electrical Workers
Joseph A. Beirne	Vice-President	President, Communication Workers of America
L. S. Buckmaster	Vice-President	President, United Rubber Workers
Joseph Curran	Vice-President	President, National Maritime Union
Allan S. Haywood	Vice-President	Chairman, Insurance Workers Organizing Committee
O. A. Knight	Vice-President	President, Oil Workers International Union
Michael Quill	Vice-President	President, Transport Workers Union
Walter P. Reuther	Vice-President	President, United Automobile Workers
Emil Rieve	Vice-President	President, United Textile Workers
Frank Rosenblum	Vice-President	Secretary-Treasurer, Amalgamated Clothing Workers

Satisfaction of the requirements of Section 9 (h) does not, of course, mean that Sections 9 (f) and (g), relating to financial and other reports, are satisfied. But with regard to those sections both the requirements themselves and their legisative histories show that Congress did not even contemplate that federations *qua* federations should be subject to them. See *Northern Virginia Broadcasters*, 75 N. L. R. B. 11, at 14. See also *Legislative History of the Labor Management Rela-*

tions Act, 1947, p. 401 (House Minority Report), p. 484 (Senate Minority Report), pp. 555-556 (House Conference Report), p. 1014 (Senate statement by Senator Taft).

The net effect of requiring federation compliance in addition to local compliance and international compliance would thus be either to disqualify some unions because other unions, whose elections they do not control, have failed to comply or, if all do comply, to require the federations to file reports which are largely meaningless and were certainly not contemplated by the Congress.

CONCLUSION

We have not, in this brief, attempted to argue extensively the merits of the question presented to the Court for decision. We believe most strongly that the court below erred and that its judgment should be reversed. The arguments presented by the petitioner based on the statutory language and its legislative history overwhelmingly demonstrate, we believe, the correctness of its position. We support them completely. In the spirit of the Court's amended Rule 27, we have refrained from repeating or rephrasing them at length. We have attempted, rather, to present to the Court the information concerning the structure of the federations and the alternatives open to the Court which, in our view, should be the proper background for the resolution of the arguments presented by the parties.

In our view, this material overwhelmingly confirms the position taken by the Board.

Respectfully submitted,

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IN THE

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October Term, 1950

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NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

HIGHLAND PARK MANUFACTURING COMPANY,
Respondent.

SUPPLEMENTAL BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE*

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The Respondent, Highland Park Manufacturing Company, in its brief submitted to this Court, has attempted to show that the C. I. O. "does exist in very large part for the purpose of dealing with employers." (Resp. Br., p. 14) Principal reliance of the Respondent is on the record in the case of *C. I. O.* v. *McAdory* (325 US 472) and upon one provision in the C. I. O. Constitution. The material thus submitted by the Respondent may seem to contradict the material heretofore submitted by the Congress of Industrial Organizations in its brief as *amicus curiae*, and this supplemental brief is addressed to these apparent conflicts. Examination of the material from which the excerpts were printed by the Respondent demonstrates that there is, in fact, no conflict.

I

It should be stated at the outset that the *McAdory* case was not, as Respondent would seem to indicate, simply a suit brought by the C. I. O. against the Solicitor of Jefferson County, Ala-

bama. The suit was brought by the C. I. O. and by the following organizations, all of whom joined as plaintiffs:

Alabama State Industrial Union Council
United Steelworkers of America
International Union of Mine, Mill and Smelter Workers
Textile Workers Union of America
Local Union 1015 of the United Steelworkers
Local Union 2971 of the United Steelworkers
Local Union 2382 of the United Steelworkers

The complaint distinguishes between the C. I. O. and the unions which were the co-plaintiffs. Paragraph 1 of the complaint describes the C. I. O. It does not allege that the C. I. O. is an organization which exists for the purpose of bargaining collectively but only that the C. I. O. is "a voluntary and unincorporated association composed of numerous voluntary and unincorporated associations or labor unions." (Record, p. 2)

Paragraphs 3, 4, 5, 6, 7 and 8 of the complaint describe the particular unions affiliated with the C. I. O. which joined as complainants. As to those complainants, it is specifically alleged that they have been designated and selected as collective bargaining representatives within the State of Alabama. The paragraphs from the complaint which the Respondent quotes from its brief on page 14 are paragraphs 9 and 10 and they have obvious reference, whenever they state that the complainants are organizations of employees organized for the purpose of engaging in concerted activities, etc., to the complainant unions and not to the complainant C. I. O.

The quotations which the Respondent has reprinted from the testimony of Mr. John Brophy in the *McAdory* case are misleading because they fail to set out the context in which the statements were made. It must be remembered that there was no issue in the *McAdory* case concerning the distinction between the C. I. O. and its affiliated unions. Both the C. I. O. and its affiliated unions were joined together in the suit. Hence, no careful distinction was drawn between the activities of the affiliated unions and the C. I. O. itself, and many times during the course of the testimony questions were asked which obviously referred to the activities of the affiliated unions in terms which, if read out of context, would appear

to indicate that the activities were activities of the C. I. O. Occasionally this failure to advert to the distinction between the C. I. O. and its affiliates is obvious. Thus, on page 82 of the record in the *McAdory* case (quoted in the appendix to the Respondent's brief), the following question was asked:

> "Q. In the collective bargaining between the C. I. O. and the employer, does the C. I. O. make contracts covering merely a plant, or does it make contracts covering all the employees if possible?"

This question would seem to indicate that the C. I. O. and not the affiliated unions made contracts and engaged in collective bargaining. The answer to the question inadvertently shows that the witness was thinking in terms of the unions which are affiliated with the C. I. O. and not the C. I. O.:

> "A. The objective of the C. I. O. National Union is to get a collective bargaining contract with all the employees of a given company or corporation, and whenever possible a contract covering all the workers in a given industry. That is the main objective of the C. I. O. unions in their collective bargaining activities."

Unfortunately, in other sections of the testimony, the distinction between the C. I. O. and its national or international unions was not clearly adverted to since the distinction was not in issue. But the testimony taken as a whole in no way indicates that the C. I. O. conducted collective bargaining or strikes.

Thus the Respondent quotes, on page 20 of his brief, testimony of Mr. Brophy in answer to a question concerning "the policy and custom of the C. I. O. to refuse to handle non-union material." Mr. Brophy's answer to the question did not in itself show that what was referred to were C. I. O. unions, not the C. I. O. itself. Later testimony by Mr. Brophy, however, made it clear that the testimony did not refer to the C. I. O. itself but to some of its affiliated unions.

> "Q. You say it is a prevalent custom and practice of C. I. O. *organizations* to engage in what is known as security boycott?
>
> "A. I don't know that it is a prevalent practice; there are situations where the worker refuses to work on a

certain article or certain product that is being produced under non-union conditions or under strike conditions.

"Q. That is done on a union basis, the union gets together and votes to do that or is instructed by the officers to do that?

"A. Yes, *it is on a union basis.* There may be a provision in the contract which provides that only certain articles manufactured under union conditions will be used in connection with the work of a certain union.

"Q. That is done collectively in many cases?

"A. As a policy, where that is done.

"Q. It is done as a union policy.

"A. Yes.

"Q. And the union policy and practice does include that weapon in certain cases?

"A. Yes. Ordinarily that would take place in the early stage of organization rather than where the union has been fully established or where collective bargaining had become accepted and where working relations were confirmed. It is the exception rather than the rule.

"Q. But it is a definite policy of the union to employ that means where found in the union's judgment necessary?

"A. *Certain unions do that.*

"Q. Certain C. I. O. unions?

"A. Yes, *certain unions may do that.*

"Q. Certain of your unions?

"A. Yes."

(Record p. 129-130, italics added)

Again, the Respondent quotes, on page 20 of his brief, testimony which would seem to indicate that individuals can be members of the C. I. O. directly. The context from which this portion was abstracted, however, shows precisely the contrary:

"Q. Mr. Brophy, of which constituent union of the C. I. O. are you now a member of?

"A. I am a member of the Stone Workers and Allied Activities Union.

"Q. *Is it possible for a member to be a member of C. I. O. and not belong to one of the constituent unions?*

"A. *No.*

"Q. There is no such thing as a member of C. I. O. who is not a member of one of the constituent unions?

"A. He must be a member of a constituent union.

"Q. C. I. O. as such, as distinguished from its constituent unions, then have no members in Alabama?

"A. Yes, in this sense, there are local industrial unions which are chartered by the National C. I. O. directly. A local industrial union is usually a group of workers for which as yet there has been no national union set up. As it were, it is the nucleus for later on to develop the setup of a national union; so they can be members of local unions who are responsible directly to the national C. I. O. office.

"Q. Let me get that clear. You mean the local union is directly responsible to C. I. O. or the individual member is directly responsible to the C. I. O. office?

"A. Well, the local union is chartered by the national C. I. O. office, and the member of the local union is, *his per capita tax is paid direct to the C. I. O. office, just as the per capita tax of another union which is affiliated with C. I. O. pays their tax to the national union.* It is an exception, but it is a continuing exception, due to the state of organization in some new industry.

• • •

"Q. The individual member of that local has his membership in the local?

"A. That is right.

"Q. And the local, in turn, affiliates directly with C. I. O.

"A. That is right.

"Q. And the individual member of the that local is not himself a member of C. I. O.?

"A. Yes; we are all members of C. I. O. It is just in the same sense you may be a citizen of Birmingham and the State of Alabama and a citizen of the United States; so I may be a member of a local union that is affiliated with a National Union that is in its turn affiliated with the C. I. O. We have the over-all membership, as it were, in this fraternity of local and national unions.

"Q. A member of that local we are talking about is a member of the C. I. O. in the same sense as the members of the United Steel Workers?

"A. That is right.

"Q. And no other?

"A. *They assume, the national officers of the C. I. O. assume to the local industrial union the same functions as the officers of the national union have toward a local union.*"

• • •

"Q. So far as you know, no man can be a member of C. I. O. and not be at the same time a member of some other constituent union of the C. I. O.

"A. That is right."

(Record p. 97-99, italics added)

Again, the quotations from the *McAdory* record printed on page 23 of the Respondent's brief would make it appear that the C. I. O. itself conducts bargaining so as to make "the same rates of pay applicable in Alabama as in Pennsylvania." Again, the answers themselves indicate that the testimony concerned the affiliated unions of the C. I. O. and not the C. I. O. itself.

Where the testimony in the case specifically adverted to the distinction between C. I. O. and its constituent unions, the description of functions which we have heretofore submitted to the Court is fully supported. Thus, the Director of the Alabama State Industrial Council, a regional sub-federation, testified as follows:

"Q. You do assist in conducting negotiations for constituent unions?

"A. We do where the International Union or Organization Committee does not have a representative in the State.

"Q. *Ordinarily the International Union assists its locals in negotiations?*

"A. *Almost always.*

"Q. And in the case of the United States Steel Workers, the International is designated for these locals here?

"A. Oh, that is standard policy.

"Q. That is standard C. I. O. policy, your general policy, that is for the National or International Union to be designated agent?

"A. It is in some International Unions, and some of them it isn't.

"Q. Tell us in which that is true?

"A. It is true in the case of the United Steel Workers of America. It is not true in the United Automobile Workers of America so far as Alabama is concerned.

"Q. Have they a local unit here?

"A. They do.

"Q. Do you know about any other constituent union that operates in Alabama?

"A. The United Retail and Wholesale and Department

Store Employees of America—the local unions do their own bargaining.

"Q. How about the Mill, Mine & Smelter Workers?

"A. The Mill, Mine Smelter Workers do, and I believe the contract in several instances with them designates the local union as the bargaining agent.

"Q. They have held several elections in Alabama?

"A. They have.

"Q. What went on the ticket in the National Labor Relations Board election, was it the local union or the National Union, to be voted on?

"A. Not being present at the time, I don't know."

(Record P. 163-164, italics added)

As to strikes, the same witness testified:

"Q. Dealing with those strikes is *aprt* (sic) of your activities, is it not?

"A. Not unless I am requested by the representative of the International Union.

"Q. *The International Union.* Is it part of the activities in the State to deal with those strikes?

"A. *It attempts to enforce its contract and constitution and assume its responsibilities.*

"Q. *That is part, to deal with strikes?*

"A. *It is.*

"Q. *And stoppage of work where there is a strike or not?*

"A. *Yes.*

"Q. And are some representative sent into Alabama?

"A. A great majority of the International representatives are natives of Alabama.

"Q. They are paid by the National or International Unions?

"A. Most of them.

"Q. Just as you are paid by the C. I. O.?

"A. Yes."

(Record P. 166, italics added)

"Q. . . . Do you know of any local industrial union in Alabama that is not affiliated with any national union?

"A. I do.

"Q. Could you name that for us?

"A. There is one at Mobile, Alabama, the United Harbor Craft Workers. It was chartered directly by the national office of the C. I. O.

"Q. Do you know of any other?

"A. There is one but it isn't functioning.

Recross examination.

By Mr. Simpson:

"Q. The United Harbor Workers at Mobile are an autonomous union with two locals, is that what that is?

"A. They are.

"Q. And if they were organized in two locals down there, you would then have two local units both in the State of Alabama, wouldn't you?

"A. We would.

"Q. Suppose they have units, say at Pensacola, would they be affiliated with them?

"A. Not as a local industrial union; they are separate until there are enough local unions to create an international union.

"Q. That is the beginning of an international union?

"A. It is; we hope.

"Q. As such the National C. I. O. organization extends it a charter of affiliation?

"A. A charter and certificate of affiliation.

"Q. And it is allowed to affiliate just as though it were as big as the biggest union in the country that desired to affiliate with C. I. O.?

"A. Yes, sir.

"Q. It is affiliated on the same basis as the United Steel Workers?

"A. It is, except membership.

"Q. Except for size; its relation to C. I. O. is the same as all other constituent unions, except for size?

"A. It is, except for size.

"Q. Then there isn't a person in the United States who is a member of C. I. O. who isn't first a member of an affiliated union?

"A. That is right."

(Record P. 170-171)

II

The Respondent's failure to give fully to the Court the testimony in the *McAdory* case is paralleled by its quotations from the C. I. O. Constitution. On page 26 of its brief the Respondent quotes Article II of the C. I. O. Constitution in such a way as to distort its provisions. A part of the quotation is printed below along with words which were omitted by the Respondent. The words which were omitted are printed in italics:

"The objects of the organization are:

"*First.* To bring about the effective organization of the working men and women of America . . . *and to unite them for common action into labor unions for their mutual aid and protection.*

"*Second.* To extend the benefits of collective bargaining . . . *by forming labor unions capable of dealing with modern aggregates of industry and finance.*"

The italicized portions which were omitted by the Respondent make it clear that the objects of the C. I. O. were to be accomplished, and in fact have been accomplished, by aiding employees to organize and create unions which would themselves extend the benefits of collective bargaining and perform similar functions for their membership.

III

The material submitted by the Respondent does emphasize one minor aspect of the C. I. O.'s activities which were, perhaps, not sufficiently spelled out in our first brief. In our brief, we stated, at page 14, that "The sub-federations exist to provide such aid to their affiliated local unions as those local unions may request. . . ." In stating elsewhere that the C. I. O. does not engage in collective bargaining, we did not mean to exclude assistance in collective bargaining from the scope of the assistance which the C. I. O. local and regional sub-federations and officers may provide, on request, to local unions.

Normally, as we stated in our brief, the C. I. O. does not participate, even to provide technical assistance, in the collective bargaining of its affiliated internationals and their locals. There are occasions, however, when local unions cannot, for one reason or another, obtain the assistance of their internationals on matters which come up in the course of the collective bargaining relationships. They may need certain technical information, or legal advice, or the aid of a negotiator and, if the local is an isolated one, the international may not have a representative in the area. In such circumstances, the regional directors of the C. I. O. or the officers of the local or regional sub-federations within the C. I. O. may, at the re-

quest of the international, supply the necessary assistance. This does not mean that the C. I. O. controls the collective bargaining. It only means that C. I. O. representatives provide technical assistance because the international is unable to do so because it does not have a representative in the area. As the testimony in the *McAdory* case shows, such cases usually arise where the locals rather than the internationals do the collective bargaining and in the exceptional case where requests for assistance by the local cannot be satisfied by the international because of the absence of a representative of the international in the area.

The fact that such assistance is occasionally rendered to isolated local unions does not in any way undercut the general propositions which we have heretofore presented to the Court that the C. I. O., as opposed to the international unions and their locals, does not itself control collective bargaining or strikes. When local officers of the C. I. O. do provide technical assistance to local unions they do so at the request of the unions and as a service to those unions, not as the directors or the formulators of collective bargaining policy. They act, in short, in the same capacity as lawyers or other professional men who may be called in by a client to provide technical assistance for the client. The client in such cases is the local union. The union controls what proposals shall be made, what proposals shall be accepted, whether a strike shall be called, etc. The union, in short, is the collective bargaining agency—to which the C. I. O., in a few cases, may provide technical assistance.

Respectfully submitted,

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